



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 19

June 4, 1992

Whether section 36.07 of the Penal Code prohibits a public servant from soliciting a payment or agreeing to a payment to a tax-exempt organization in return for a speaking engagement related to the public servant's official position. (AOR-17)

The Texas Ethics Commission has been asked to consider whether section 36.07 of the Penal Code prohibits a public servant from soliciting a payment or agreeing to a payment to a tax-exempt organization in return for a speaking engagement related to the public servant's official position. Since January 1, 1992, public servants have been prohibited from soliciting, accepting, or agreeing to accept honorarium.¹ Section 36.07(a) of the Penal Code states:

A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.

This section prohibits a public servant from soliciting or accepting a speaking fee for a speech that would not have been requested "but for" the speaker's official position. *Id.* The requestor states that the speaking engagements under consideration are directly related to the speaker's official position. Therefore, in this situation the public servant is prohibited from soliciting or accepting payment in consideration for his services.² See [Ethics Advisory Opinion No. 17](#) (1992). The question raised is whether the section 36.07 prohibition on solicitation and acceptance of honorarium extends to a speaking fee that is paid to a third party.³

The requestor has described two situations. In the first situation, the speaker solicits a donation to a specific tax-exempt organization. The statute prohibits solicitation of an honorarium, which includes a speaker's fee. *Id.* The question raised is whether solicitation for the benefit of a person or entity other than the speaker himself is permissible under section 36.07(a). We think the prohibition extends to solicitation of payment to be made to a person or entity other than the speaker as long as the payment is made in consideration of the speech and at the direction of the speaker. Thus the speaker may not request that a payment in consideration of his speech be made to a third party.

In the second situation, the payor makes an offer to make a payment to a tax-exempt organization in exchange for the speaker's services. The relevant statutory language here is that a public servant is prohibited from accepting or agreeing to accept an honorarium in consideration for speaking in his official capacity. We conclude that this prohibition extends also to accepting or agreeing to accept a payment to a third party in exchange for speaking.⁴

SUMMARY

Section 36.07(a) of the Penal Code prohibits a public servant from accepting or soliciting a fee for speaking if the public servant would not have been requested to speak but for his official position or duties. The prohibition extends to a request for or acceptance of a payment made to a third party if the speaker agrees to speak in exchange for such payment.

¹ See Attorney General Opinion H-551 (1975) (discussion of what "honorarium" means in different situations). The opinion lists various definitions for "honorarium," concluding that the term commonly is used to embrace the idea of both a gift and compensation. *See also* [Ethics Advisory Opinion No. 17](#) (1992).

² Previously a public servant could, under certain circumstances, accept honoraria "in consideration for legitimate services rendered above and beyond official duties and responsibilities." *See* Penal Code § 36.10(3) (Vernon 1989) (effective until January 1, 1992).

³ The requestor has phrased the question in terms of payment to a tax-exempt organization. There is nothing in section 36.07(a) to support an interpretation that would treat tax-exempt organizations differently from other third parties.

⁴ An organization is free to make a donation in the name of any person. The situation considered in this opinion is that the speaker solicited a payment or agreed to speak in exchange for a payment to a third party.