



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 29

June 4, 1992

*Reporting requirements for the waiver of a symposium registration fee granted to certain members of the legislature and a governmental task force. (AOR-16)*

The Texas Ethics Commission has been asked several questions about a symposium sponsored by three nonprofit organizations. The organizations would charge a registration fee of \$295 for the symposium. The registration fee would cover the program, the printed materials, meals, and receptions. The sponsors would like to waive the registration fee for certain members of the legislature and members of a governmental task force.

The first question is whether the waiver would be reportable as a gift on a financial disclosure statement filed under article 6252-9b, V.T.C.S. Every state officer is required to file such a financial disclosure statement. V.T.C.S. art. 6252-9b, § 3(a). Legislators are state officers for purposes of the requirement. *Id.* § 2(2)(A).<sup>1</sup> Among the information to be included on a financial disclosure statement is:

identification of any person, business entity, or other organization from whom the person or his spouse or dependent children received a gift of anything of value in excess of \$250 in value and a description of each gift, except:

- (A) gifts received from persons related to the person at any time within the second degree of consanguinity or affinity, as determined under [the nepotism statute];
- (B) political contributions that were reported as required by law; and
- (C) expenditures required to be reported by a person required to be registered under Chapter 305, Government Code.

*Id.* § 4(c)(7). A waiver of a \$295 fee would be within the general reporting requirement. Waiver of the fee in question for a legislator in this case, however, would be excepted under subsection (C).

Subsection (C) excepts expenditures required to be reported by a person required to be registered under chapter 305 of the Government Code, which regulates lobbying activity. This raises the question of whether the waiver of the fee in question would be to influence legislative action and therefore subject to the lobby statute.<sup>2</sup> "Legislative action" is defined to include matters that *may* be the subject of legislative action. Gov't Code § 305.002(6)(B).<sup>3</sup> The requestor has provided an agenda of the seminar that indicates the symposium will communicate a particular point of view in regard to a matter that may be the subject of legislative action. A fee waiver for legislators would be to influence legislative action and the lobbyist donor would be required to report the expenditure.<sup>4</sup> Because the donor would be required to register as a lobbyist and to report the expenditure, a legislator would not be required to report the expenditure on a financial disclosure statement. V.T.C.S. art. 6252-9b, § 4(c)(7)(C).

The requestor also asks whether a portion of the fee waiver would be reportable as an expenditure for food and beverages under the lobby statute. The lobby statute requires that expenditures to communicate directly with a member of the legislative or executive branch be reported in the following categories:

- (1) transportation and lodging;
- (2) food and beverages;
- (3) entertainment;
- (4) gifts, other than awards and mementos;
- (5) awards and mementos; and
- (6) expenditures made for the attendance of members of the legislative or executive branch at political fund-raisers or charity events.

Gov't Code § 305.006(b). The question in the situation at hand is whether the entire fee waiver should be reported as a gift or whether the fee waiver should be apportioned between the categories of "gift"<sup>5</sup> and "food and beverages" since the fee for this symposium covers the cost of meals. *See generally id.* §§ 305.006(e) (the same expenditure cannot be reported in two categories), 305.0061(f) (regarding apportionment of expenditures made to communicate with more than one member of the legislative or executive branch).

The lobby statute does not specifically address the reporting requirements applicable to a single fee that covers items in different categories. The lobby statute contains restrictions in regard to food and beverages, however, that are not applicable to expenditures for gifts. *Id.* §§ 305.006(f), 305.0061(b), 305.024(a)(7). Similarly, it contains restrictions about gifts that are not applicable to food and beverages. *Id.* §§ 305.0061(c), 305.024(a)(5). Reporting the fee waiver as a "gift" without apportioning out the amount attributable to food and beverages could raise difficult questions about the application of those restrictions. Apportioning the fee would eliminate such problems. We conclude therefore that the fee should be apportioned between "food and beverages" and "gifts."

We note that the request also raises issues about the application of Penal Code sections 36.08 and 36.09, which prohibit both the offer and the acceptance of a "benefit" by a legislator. "Benefit" is "anything reasonably regarded as pecuniary gain or pecuniary advantage." Penal Code § 36.01(5). However, even if the waiver of the fee in this situation is a benefit, there are exceptions to the prohibitions on the offer and acceptance of both gifts and food<sup>6</sup> that would be applicable here.<sup>7</sup> The prohibitions do not apply to a gift that is required to be reported under the lobby statute. *Id.* § 36.10(a)(5). Also, the prohibitions do not apply to food accepted as a guest if reported by the donor or donee, if there is an applicable reporting requirement.<sup>8</sup> Penal Code § 36.10(b), (c); *see Ethics Advisory Opinion No. 12* (1992) (regarding meaning of "guest" in chapter 36 of the Penal Code).

## SUMMARY

A state officer is not required to report on his personal financial statement a gift required to be reported by the donor under chapter 305 of the Government Code. The waiver of a fee is reportable as a lobby expenditure under chapter 305 of the Government Code. If the fee covers items in different reporting categories, the fee should be apportioned and reported in the applicable categories.

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<sup>1</sup> Because the requestor does not describe the task force in question in more detail, we are unable to say whether members of the task force are required to file financial disclosure statements. *See generally Ethics Advisory Opinions Nos. 28, 27, 26, 22, 21, 1* (1992) (considering application of filing requirement to various bodies).

<sup>2</sup> A person is required to register as a lobbyist if the person expends more than \$200 in a calendar quarter on certain activities, or is compensated more than \$200 in a calendar quarter, "to communicate directly to influence legislation or administrative action." *See Gov't Code* § 305.003(a).

<sup>3</sup> If members of the task force are members of the executive or legislative branch for purposes of chapter 305, the waiver of the fee would presumably be to influence administrative action. *See Gov't Code* § 305.002(1), (4), (7) (defining "administrative action," "member of the

executive branch," and "member of the legislative branch").

<sup>4</sup> Because the activity in question is subject to chapter 305, this opinion does not necessarily apply to such activity by persons not subject to chapter 305.

<sup>5</sup> Note that the term "gift" in article 6252-9b, which requires state officers to file a financial disclosure statement, encompasses any type of gift, including food and beverages. V.T.C.S. art. 6252-9b, § 4(c)(7).

<sup>6</sup> The Penal Code refers to "food," whereas the lobby statute refers to "food and beverages." We think the categories were, however, intended to be the same. Therefore "food" under the Penal Code would include beverages.

<sup>7</sup> The Penal Code also prohibits bribery. Penal Code § 36.02. "Benefit" is a critical term in the bribery prohibitions. We assume that the other elements of bribery are not present in the situation before us.

<sup>8</sup> In this case, legislators and other state officers would not, as indicated earlier, be required to report the fee waiver. The organizations waiving the fee would be required to report in accordance with chapter 305 of the Government Code.