



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 31

*July 24, 1992*

*Whether the lobby statute prohibits a private company from making certain donations or expenditures for the benefit of state agencies or state universities. (AOR-22)*

The Texas Ethics Commission has been asked to consider several questions about the application of chapter 305 of the Government Code, the lobby statute. The first question is whether chapter 305 would prohibit a private company from donating surplus equipment to the Parks and Wildlife Department. Chapter 305 requires the reporting of certain expenditures made to communicate directly with one or more members of the executive branch if the communication is made to influence administrative action. Gov't Code § 305.003(a)(1). The reportable expenditures are expenditures for:

- (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.

*Id.* § 305.006(b). Chapter 305 clearly applies to gifts made to individual members of the Parks and Wildlife Department. The question raised here, however, is whether chapter 305 applies to a gift made to a state agency rather than to an individual officer or employee of the agency.

The lobby statute applies to an expenditure for a gift made to communicate directly with one or more members of the executive branch. It is possible that a person would make a gift to a state agency in order to influence the administrative action. Several provisions of chapter 305, however, lead to the conclusion that the lobby statute does not apply to an expenditure for a gift made to a state agency rather than to an individual officer or employee. First, section 305.0061 lists several reporting requirements applicable to expenditures for "gifts." Gov't Code § 305.0061(c). One is that "the name of the member of the legislative or executive branch in whose behalf the expenditure is made" must be reported if the value of the gift exceeds \$50. *Id.* Another provision of chapter 305 states that a person may not confer on "a member of the legislative or executive branch" an expenditure or series of expenditures for gifts that in the aggregate exceed \$500 a year. *Id.* § 305.024(a)(5). Those provisions indicate that the focus of the lobby statute was expenditures made for the benefit of individuals, not expenditures made for the benefit of a state agency.

Whether a particular state agency may accept gifts is governed by other law. *See* Attorney General Opinions JM-684 (1987), H-1180 (1978) (regarding statutory authority of state agencies to accept gifts). *See generally* Attorney General Opinion H-1309 at 4-5 (1978) (noting that an officer or employee may accept gifts on behalf of agency if agency has authority to accept gifts). We note that the Parks and Wildlife Department has statutory

authority to accept gifts for specific purposes. *See, e.g.*, Parks & Wild. Code §§ 11.028 (volunteer services and funds to carry out duties of department), 13.003 (department may accept gifts of state park sites), 13.005(a) (department may acquire historical structures or sites by gift), 13.011(b) (department may accept gifts of suitable sites for markers or monuments). We do not find any general authority for the department to accept gifts. *Cf.* Gov't Code § 481.021(3) (Commerce Department has authority to accept gifts from any entity).

Even if a state agency has general authority to accept gifts, that authority is limited by certain restrictions applicable to any state agency. A state agency has only that authority granted by statute. *Acme Refining Co. v. State*, 86 S.W.2d 507, 510 (Tex. Civ. App.--El Paso 1935, no writ). Thus a state agency may dispose of property only in connection with its exercise of statutory authority. In light of this principle, a state agency's authority to accept gifts is necessarily limited to acceptance of gifts that the state agency can use in connection with its exercise of its statutory authority. Also, a gift to a state agency becomes state property. Attorney General Opinion H-74 at 5 (1973). The constitution prohibits the use of state property for private purposes. Tex. Const. art. III, § 51. Once a state agency accepts a gift, its disposition of that gift is limited by the constitutional prohibition and the agency may not allow the use of the gift for private purposes. In summary, although gifts to agencies, rather than individuals, are not subject to chapter 305 of the Government Code, the acceptance of such gifts is restricted by other law, over which the Ethics Commission has no interpretive authority.<sup>1</sup>

The requestor has also asked whether the lobby statute would prohibit a private company from presenting a program on supervisory skills for the benefit of employees of the Texas Railroad Commission. If the purpose of the program is to benefit the employees in their capacity as Railroad Commission employees, the lobby statute would not apply to the provision of this program since the program would be an expenditure for the benefit of the Railroad Commission. Whether the provision of a particular program would be for the benefit of a state agency rather than for the benefit of an individual is a fact question.

The third question is whether a private company may make grants to state colleges or universities. Again, the lobby statute does not apply to grants to a governmental body. Whether a particular college or university has authority to accept a particular gift is a matter for the university to determine. As discussed above, a university's authority to accept grants would be limited.

Finally, the requestor asks whether chapter 305 prohibits a private company from purchasing meals for employees of a state college or university. Chapter 305 applies to communications with members of the executive branch to influence administrative action. "Member of the executive branch" is defined as "an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of state government." Gov't Code § 305.002(4). "Administrative action" includes any matter that "may be the subject of action by a state agency." *Id.* § 305.002(1). The statute does not further define "state agency."

The legislature has sometimes expressly excluded state colleges and universities from definitions of "state agency." *See, e.g.*, V.T.C.S. arts. 4591.2, § 1(3); 5165a, § 1(1); Gov't Code §§ 404.092, 783.003(4); Health & Safety Code § 361.421(9). More frequently, the legislature has expressly included state colleges and universities in definitions of "state agency." *See, e.g.*, V.T.C.S. arts. 601f, § 1(1); 4413(33b), § 1(2); 5421t, § 1(4); 6252-3g, § 1.01(12); 6252-8e, § 1(4); 6252-9b, § 2(8); 6252-9f, § 1(1); 6252-11b, § 1(1); 6252-16a, § 1(4); Gov't Code §§ 315.002, 403.013(a)(3), 403.055(f)(2), 403.241(4)(C), 481.0841(e)(2), 751.001(4), 771.002(1)(B); Health & Safety Code § 85.002(5); Nat. Res. Code § 31.151(4). In other statutes, as in Government Code chapter 305, the legislature has been silent as to whether colleges and universities are state agencies. *See, e.g.*, V.T.C.S. arts. 4413(33a), § 4(3); 5221g-2, § 1; 6252-5e, § 1(2); 6252-5f, § 1(3); 6252-16d(d); 6252-23, § 1(a); 6252-29a, § 2.001(7); 6252-32, § 1(4); 9027, § 1(2); Civ. Prac. & Rem. Code § 105.001(3); Gov't Code §§ 317.001(2), 403.0165(l)(2); Hum. Res. Code § 74.001. Where a statute is silent in this regard, it is appropriate to look to the purpose of the statute to determine whether state colleges and universities are to be included within the scope of "state agency" or a similar term.

In essence, chapter 305 seeks disclosure of compensation received and expenditures made in connection with attempts to persuade governmental officers and employees to take certain action. It is no less a matter of public interest that a person is making expenditures in an attempt to persuade an employee of a state university to take

certain action than it is that a person is making expenditures in an attempt to persuade an employee of any other governmental body to take certain action. We conclude, therefore, that the phrase "state agency" in chapter 305 includes state colleges and universities.

The specific question before us is whether chapter 305 prohibits a private company from purchasing meals for employees of a state college or university. The requestor states that the purpose would be to "maintain cordial relations and lines of communication concerning department programs, exceptional students, our reputation, and our employment needs." If the purpose of the communications in connection with the meals is to influence administrative action, the expenditure for the meals would have to be reported on a lobby activity report by the lobbyist under the category of "food and beverages." Gov't Code § 305.006(b)(2). If a daily lobby expenditure for food and beverages for an individual officer or employee exceeds \$50, the lobbyist would have to file the detailed report required by section 305.0061(b). Also, lobby expenditures for meals are prohibited if the registrant is not present for the meal. *Id.* §§ 305.006(f), 305.024(a)(7).

### SUMMARY

Chapter 305 of the Government Code does not apply to gifts made to a state agency rather than to individual officers or employees of a state agency. Whether a particular agency has authority to accept a gift is governed by other law, over which the Ethics Commission has no interpretive authority.

Expenditures for an educational program presented to employees of a state agency in their capacity as state employees would not be expenditures reportable under chapter 305 of the Government Code if the program primarily benefits the agency rather than the individual. State colleges and universities are "state agencies" for purposes of chapter 305 of the Government Code. A private company that purchases meals for employees of a state college or university is engaging in lobby activity if the company's purpose in purchasing the meals is to communicate to influence action by the college or university.

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<sup>1</sup> As a general rule, money received by a state agency must be placed in the state treasury. Gov't Code § 404.094. No money may be withdrawn from the state treasury except pursuant to a legislative appropriation. Tex. Const. art. VIII, § 6. The current appropriations act appropriates all gifts of money to state agencies that have authority to accept gifts. Monetary gifts are appropriated to the agency designated by the grantor. Acts 1991, 72d Leg., 1st C.S., ch. 19, art. V, § 21, at 1022.