



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 41

July 24, 1992

Whether a legislator may provide legal services to a special-purpose district. (AOR-54)

The Texas Ethics Commission has been asked to consider whether the provisions of Senate Bill 1 prohibit a legislator from providing legal services to a special-purpose district. S.B. 1, Acts 1991, 72d Leg., ch. 304, at 1290.

The statutes amended by Senate Bill 1 that are relevant to this question are chapter 36 of the Penal Code and article 6252-9b, V.T.C.S. Chapter 36 of the Penal Code prohibits a legislator from accepting a benefit from any person. Penal Code § 36.08(f). "Benefit" means "anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest." *Id.* § 36.01(5). There is an exception to the prohibition set out in section 36.08(f), however, for a fee for which a public servant "gives legitimate consideration in a capacity other than as a public servant." *Id.* § 36.10(a) (1). Therefore section 36.08 does not prohibit a fee for the actual value of services rendered.¹

The legislature has set out standards of conduct for state officers and employees. V.T.C.S. art. 6252-9b, § 8. One of those standards provides as follows:

No state officer or state employee should accept other employment or compensation which could reasonably be expected to impair his independence of judgment in the performance of his official duties.

Id. § 8(c). It is a matter of personal ethics for each state officer to determine whether particular employment would violate that standard. See [Ethics Advisory Opinion No. 28](#) at 7-8 (1992) (regarding section 8 standards of conduct). The legislature has not attached specific sanctions to violations of those standards. *Id.*

Neither chapter 36 of the Penal Code nor article 6252-9b, section 8, prohibits a legislator from accepting employment from a special district.²

SUMMARY

The statutes amended by Senate Bill 1 of the 72d Legislature do not prohibit a legislator from accepting employment from a special district.

¹ The words "legitimate consideration" in section 36.10(a)(1) make clear that the fee must reflect the actual value of the services.

² Article III, section 18, of the Texas Constitution prohibits a member of the legislature from having an interest in a contract with the state or with a county if the contract was authorized by any law passed during the term for which the member was elected. Questions about the scope of that provision should be addressed to the attorney general.