



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 54

*September 10, 1992*

*Whether an employee or official of a state agency who delivers a speech to a nonprofit organization may accept lunch from the organization in connection with the event. (AOR-47)*

The Texas Ethics Commission has been asked whether chapter 36 of the Penal Code prohibits an employee of a state agency from accepting lunch from a nonprofit organization. The state agency employee has been asked to speak about the agency's position on certain public issues. Lunch is to be provided during the speaking engagement. The requestor indicates that the nonprofit organization is not regulated by the agency.<sup>1</sup>

Because the employee is speaking in his capacity as a public servant and the meal is provided in connection with that speaking engagement, the issue is governed by the honorarium provision of Penal Code section 36.07. Section 36.07(a) prohibits a person from soliciting, accepting, or agreeing to accept an honorarium in consideration of services that would not have been requested "but for" the person's official position or duty. *See Ethics Advisory Opinions Nos. 19, 17* (1992). However, section 36.07(b) provides:

This section does not prohibit a public servant from accepting transportation and lodging expenses permitted under Section [305.025(4)], Government Code, in connection with a conference or similar event or from accepting meals in connection with such an event.

Therefore, if the speaking engagement is in connection with a "conference or similar event," the employee may accept the lunch provided in connection with such an event.<sup>2</sup> *See Ethics Advisory Opinion No. 18* (1992).

If the meal is not provided in connection with a "conference or similar event," questions arise as to whether the meal is prohibited by provisions of the Penal Code. In various circumstances, public servants are prohibited from accepting benefits. Penal Code § 36.08. Even if the meal is a benefit, however, the prohibitions set out in section 36.08 do not apply to a meal accepted as a "guest."<sup>3</sup> *See Ethics Advisory Opinion No. 12* (1992). Section 36.10(b) of the Penal Code states that the prohibition against acceptance of a benefit "does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law."<sup>4</sup> The agency employee would fall within this "guest" exception if members of the organization are present during the meal. *See Ethics Advisory Opinion No. 12*.

### SUMMARY

An employee of a state agency who delivers a speech and accepts lunch provided in connection with the speech is not prohibited from accepting the meal by chapter 36 of the Penal Code.

<sup>1</sup> The requestor indicates that the organization is not providing the lunch to communicate with the officer to influence administrative action and is therefore not engaging in activity regulated by chapter 305 of the Government Code. If the organization's activity were regulated by the lobby statute, various reporting requirements would apply. Gov't Code § 305.025(4); *See Ethics Advisory Opinion No. 17* (1992).

<sup>2</sup> It has been suggested that section 36.07(b) merely stands for the proposition that provision of food, transportation, and lodging are not prohibited as honoraria, but that food, transportation, and lodging provided in connection with a conference or similar event may still be a prohibited "benefit" under Penal Code section 36.08. We think, however, that the various provisions of chapter 36 of the Penal Code must be read together. *See* Penal Code § 36.01(5). We believe the legislature, by providing that food, transportation, and lodging provided in connection with a conference or similar event are not prohibited, did not intend the provision of these items in connection with the public servant's service under these circumstances to be "benefits." Such provision would rather be considered as offsetting expenses necessarily connected with the provision of an unpaid service by the public servant.

<sup>3</sup> The "guest" exception is not applicable to the prohibition in section 36.08(g):

A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. *The exception provided by section 36.10(b) of this code does not apply to a benefit under this subsection.* (Emphasis added.)

<sup>4</sup> In the case of an agency employee accepting a meal, there would generally be no applicable reporting requirement.