



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 61

October 23, 1992

Whether promotional or commemorative items of minimal value are benefits prohibited by chapter 36 of the Penal Code. (AOR-42)

The Texas Ethics Commission has been asked about the acceptance of gifts by employees of a regulatory agency. Specifically, the requestor asks about items such as caps and coffee mugs offered by a person or business regulated by the agency. Generally, these are items that the person or business does not sell but gives away for promotional purposes. The requestor asks whether agency employees may accept such gifts.

Section 36.08(a) of the Penal Code provides as follows:

A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

Section 36.08(d) provides:

A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

See Penal Code § 1.07(30) ("public servant" includes government employees). All employees of a regulatory agency are subject to section 36.08(a); many of them will also be subject to section 36.08(d).

The focus of the requestor's question is whether a cap, coffee mug, or other promotional item is a "benefit." "Benefit," for purposes of chapter 36 of the Penal Code, means anything "reasonably regarded as pecuniary gain or pecuniary advantage." Penal Code § 36.01(5). We think the use of the words "reasonably regarded" in this definition indicates that the legislature did not intend all items to which a value could be attached to come within the definition of "benefit." Further, we think that the words "reasonably regarded" permit consideration of the social context in which something is presented. In the situation described, the items are unsolicited and are not offered in exchange for any action or inaction on the part of the public servant. In those circumstances, we do not think that promotional or commemorative items of minimal value are within the definition of "benefit." See [Ethics Advisory Opinions Nos. 60, 36 \(1992\)](#).

Our conclusion that such items are not benefits in a certain context means only that chapter 36 of the Penal Code does not make the solicitation, offer, and acceptance of such items in that context a crime. It is nonetheless inappropriate for a state employee to accept such items if the acceptance might reasonably tend to influence him in the discharge of his official duties or if he knows or should know that they are being offered to him with the intent to influence his official conduct. V.T.C.S. art. 6252-9b, § 8(a). Also, particular state agencies may have personnel policies that prohibit acceptance of any gifts. This opinion does not supersede such personnel policies.

SUMMARY

"Benefit," for purposes of chapter 36 of the Penal Code, does not include promotional or commemorative items of minimal value such as caps, coffee mugs, tee shirts, and key rings if such items are unsolicited and not offered or accepted in exchange for any action or inaction on the part of a public servant.