



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 62

October 23, 1992

Acceptance of gifts by state agencies and their officers or employees. (AOR-43)

The Texas Ethics Commission has been asked a number of questions about the acceptance of gifts by officers and employees of a state agency and also about the acceptance of gifts by the agency itself. The first question is whether the agency in question may accept gifts of food and beverages brought to the agency. Whether an agency, as opposed to individual officers or employees of an agency, may accept such gifts is not governed by chapter 305 of the Government Code or chapter 36 of the Penal Code. *See Ethics Advisory Opinion No. 31* (1992). Rather, it is governed by the laws specifically applicable to that agency. *Id.* Even if a state agency has general authority to accept gifts, a state agency's authority to accept gifts is limited to acceptance of gifts that the state agency can use in connection with its exercise of its statutory authority. *Id.* A consumable gift unrelated to an agency's mission would not be a gift to an agency. There are state agencies--for example, the Department of Mental Health and Mental Retardation--that could make use of gifts of food and beverages in the exercise of statutory authority. In a typical agency, though, that would not be the case.

The requestor also asks whether an individual state officer or employee may accept gifts of food and beverages brought to agency offices. Specifically, the requestor asks about section 36.08(a) of the Penal Code,¹ which prohibits an officer or employee in a regulatory agency from accepting a "benefit" from a person the officer or employee knows to be subject to the agency's regulatory authority.² "Benefit," for purposes of chapter 36 of the Penal Code, means anything "reasonably regarded as pecuniary gain or pecuniary advantage." *Ethics Advisory Opinions Nos. 61, 60, 36* (1992). Food may be a benefit, but not every food item is necessarily a benefit. *Ethics Advisory Opinion No. 60* (1992) (\$60 restaurant meal is a benefit). The social context in which food is presented is relevant in determining whether something is a benefit. *Ethics Advisory Opinion No. 61* (1992). The requestor describes situations in which constituents bring home-grown or home-baked items to a government office; the items are unsolicited and are not offered or accepted in exchange for any action or inaction on the part of a public servant. We do not think the legislature intended the term "benefit" to include, in the circumstances described, perishable foods in small amounts that a donor delivers infrequently to a governmental office.³ Whether food in a particular case is a benefit is a fact question. The Ethics Commission recommends that public servants exercise good judgment and caution in these matters.

Even if an item is not a "benefit" in a particular context, it is inappropriate for a state officer or employee to accept any gift if it might reasonably tend to influence him in the discharge of his official duties or if he knows or should know that it is 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 gifts. This opinion does not supersede such personnel policies.

SUMMARY

"Benefit," for purposes of chapter 36 of the Penal Code, does not include small amounts of food that a donor delivers infrequently to a public servant at a governmental office as long as the food is unsolicited and is not offered or accepted in exchange for action or inaction on the part of a public servant. Whether food in a

particular case is a benefit is a fact question. The Ethics Commission recommends that public servants exercise good judgment and caution in these matters.

¹ Also, 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).

² *See also* Penal Code § 36.02 (bribery); [Ethics Advisory Opinion No. 60](#) (1992) (discussing bribery).

³ The requestor asks that the commission assume that the donor is not a lobbyist. Even if the donor is a lobbyist, the prohibitions in section 36.08 are applicable. Also, the exceptions to the prohibitions in section 36.08 are applicable to lobbyists and non-lobbyists alike. Under the lobby statute, chapter 305 of the Government Code, a registrant may not make an expenditure for food and beverages unless the registrant is present. Gov't Code § § 305.006(f), 305.024(a)(7). The distinction between lobbyists and non-lobbyists is significant, however, in that, under title 15 of the Election Code, an elected officer may accept food from a non-lobbyist as an "officeholder contribution" to be used for officeholder purposes. *See* Elec. Code § 251.001(4) (defining "officeholder contribution"); *see also id.* § 251.001(2) (defining "contribution" to exclude expenditures required to be reported under lobby statute). *See generally* [Ethics Advisory Opinion No. 46](#) (1992) (discussing relationship between lobby statute and title 15). The prohibition on acceptance of benefits set out in subsections (a) and (d) of section 36.08 are not applicable to political contributions.