



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 63

October 23, 1992

Authority of the Governor to accept certain gifts. (AOR-67)

The Governor has asked the Ethics Commission about the acceptance of certain gifts. The Governor is prohibited from accepting a "benefit" from any person.¹ Penal Code § 36.08(f); *see id.* §§ 36.10 (listing exceptions to prohibition against acceptance of benefits), 36.02 (bribery). A "benefit" is "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). In this context, the Governor asks about the acceptance of valuable gifts presented to the Governor by visiting dignitaries. Although the Governor cannot accept such gifts for her personal benefit, various provisions in the Texas Constitution make clear that the Governor is an appropriate person to accept gifts on behalf of the state. *See* Tex. Const. art. IV, §§ 1 (Governor is the "Chief Executive Officer of the State"), 10 (directing Governor to conduct all "business of the State with other States and with the United States").² The disposition of any such gifts would be within the authority of the legislature. *See generally id.* art. III, § 1 (vesting legislative power in legislature); Attorney General Opinion JM-1170 (1990) (disposition of state-owned land is matter for legislature).

The Governor also asks about unsolicited personal gifts she receives at public appearances or at her office. Examples are caps, tee shirts, perishables, arts and crafts, books, and flowers. As a general rule, "benefit" does not include commemorative or promotional items such as caps, coffee mugs, tee shirts, and key rings as long as the items are unsolicited and are not offered or accepted in exchange for any action or inaction on the part of a public servant. *See Ethics Advisory Opinions Nos. 61, 36* (1992). Nor does it include perishable foods delivered infrequently and in small amounts to a government office--again, as long as the food is unsolicited and is not offered or accepted in exchange for any action or inaction on the part of a public servant.³ *See Ethics Advisory Opinion No. 62* (1992). The same test would apply to perishable foods in small amounts given to a public servant at a public appearance. Flowers given to the Governor at a public appearance are not benefits. Flowers delivered to a government office may be benefits. *See generally Ethics Advisory Opinion No. 36* (1992) (plaque offered as gesture of appreciation). Books and arts and crafts may be benefits. If so, the Governor may not accept them as personal gifts. The Governor may, of course, accept them on behalf of the state, again subject to disposition by the legislature. *See Ethics Advisory Opinion No. 60* (1992).

The Governor's final question is whether one of her staff members may accept a waiver of tuition, transportation, food, and lodging at a seminar if the state would otherwise pay the costs. A state employee who, at the direction of his employing agency, attends a seminar relevant to his job is not obtaining a benefit. The employee may accept tuition, food, transportation, and lodging at such a seminar only to the extent to which the state would pay for food, transportation, and lodging in connection with the seminar. In that case, the benefit would be to the state and neither chapter 36 of the Penal Code nor chapter 305 of the Government Code would apply. *See Ethics Advisory Opinion No. 31* at 3 (1992). *See generally* Tex. Const. art. III, § 51 (state funds may not be used for private purposes).

SUMMARY

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The Governor may accept gifts from visiting dignitaries on behalf of the state. "Benefit," for purposes of chapter 36 of the Penal Code, does not include the following items as long as they are unsolicited and are not offered or accepted in exchange for any action or inaction on the part of a public servant: promotional or commemorative items such as caps, coffee mugs, tee shirts, and key rings; fresh-cut flowers given to a public servant at a public appearance; and perishable foods delivered infrequently and in small amounts to a government office or given to a public servant at a public appearance.

A state employee who, at the direction of his employing agency, attends a seminar relevant to his job is not obtaining a benefit. The employee may accept tuition, food, transportation, and lodging at such a seminar only to the extent to which the state would pay for tuition, food, transportation, and lodging in connection with the seminar. In that case, the benefit would be to the state and neither chapter 36 of the Penal Code nor chapter 305 of the Government Code would apply.

¹ Gifts from lobbyists are also subject to the restrictions in the lobby statute, chapter 305 of the Government Code.

² As an officeholder, the Governor may accept as a political contribution something given with the intent that it be used to defray expenses that the Governor incurs "in performing a duty or engaging in an activity in connection with" her office and that are not reimbursable with public funds. Elec. Code § 251.001(4); [Ethics Advisory Opinion No. 25](#) (1992) (regarding officeholder contributions). For example, the Governor may accept as an officeholder contribution an item given for display in the Governor's mansion. Such a gift would be subject to the reporting and disposition requirements set out in title 15 of the Election Code. *See* ., e.g. , *id* . § 254.031 (contents of reports), 254.204 (disposition of unexpended contributions).

³ Also, the Governor may accept as a political contribution food for use for officeholder purposes from non- lobbyists. *See* [Ethics Advisory Opinion No. 62](#) (1992).