



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 64

October 23, 1992

*Whether a lobbyist may provide food and beverages at a reception to members of the legislative and executive branches without violating chapter 36 of the Penal Code. (AOR-52)*

A registered lobbyist has asked the Texas Ethics Commission to consider the following question:

Does the hosting of a reception to which certain members and staff of the legislative and executive branch are invited constitute a violation of Chapter 36 of the Texas Penal Code in that the reception, the food and beverages served therein become a "benefit" under that Act? Would such activities therefore be illegal under Chapter 36?

For purposes of chapter 36 of the Penal Code, 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." Penal Code § 36.01(5). In many circumstances, food and beverages are "benefits." See [Ethics Advisory Opinions Nos. 63, 62, 60](#) (1992).

The term "benefit" appears in several different prohibitions in chapter 36 of the Penal Code. Under one of those prohibitions, a legislator commits a Class A misdemeanor if he "solicits, accepts, or agrees to accept any benefit from any person." Penal Code § 36.08(f); *see also id.* § 36.09 (making it an offense to offer, confer, or agree to confer a benefit on a public servant that the donor knows the public servant is prohibited from accepting). The prohibitions set out in sections 36.08(f) and 36.09(a) are inapplicable, however, if a legislator accepts benefits of food and beverages as a "guest" and the donor reports the food and beverages in accordance with the requirements of the lobby statute. *Id.* § 36.10(b), (c). See generally [Ethics Advisory Opinion No. 12](#) (1992) (discussing "guest" exception to prohibitions set out in section 36.08). That exception would generally apply to food and beverages served at a reception.

The term "benefit" also appears in the prohibition against bribery, which is set out in section 36.02 and provides in part:

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

....

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official.

The offense of bribery is made up of a number of elements other than the offer or acceptance of a benefit. If those elements are present *and* if there is a solicitation, offer, or acceptance of a benefit, an offense under the bribery statute has occurred. See [Ethics Advisory Opinions Nos. 60](#) (1992) (discussing distinction between permissible lobby expenditures and bribery), [36](#) (1992) (acceptance of plaques).

**SUMMARY**

Food and beverages provided at a reception are not prohibited benefits under sections 36.08 and 36.09 of the Penal Code if the person providing the food and beverages is present at the reception and if the donor or donee, as applicable, complies with any applicable reporting requirement.