



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 67

*October 23, 1992*

*Reporting requirements for a lobbyist's provision of a booklet given at no charge or sold at cost to members of the legislature. (AOR-66)*

A person registered as a lobbyist has asked the Texas Ethics Commission several questions about producing and distributing a pocket-sized book. The registrant states that the book is "not published as a for-profit enterprise but rather as a courtesy to members of the legislature." The book, described as a layman's guide to the legislative process, is either given at no charge or sold at cost to members of the legislature. The requestor indicates that members of the legislature give the books to constituents or office visitors. The requestor asks whether the practice of producing and distributing a book "as a courtesy" to legislators at no cost is permissible under the statutes amended by Senate Bill 1, in particular chapter 36 of the Penal Code and chapter 305 of the Government Code.

A person registered as a lobbyist under chapter 305 of the Government Code may give gifts to legislators, and legislators may accept those gifts.<sup>1</sup> The lobbyist must report any such gift on a lobby activity report. Gov't Code § 305.006; Penal Code § 36.10(a)(5). Detailed reporting under section 305.0061(c) of the Government Code is necessary if the value of the total number of books given to an individual legislator exceeds \$50. A registrant is, however, prohibited from giving, and a legislator from accepting, "an expenditure or series of expenditures for gifts that in the aggregate exceed \$500 in a calendar year." Gov't Code § 305.024(a)(5), (b).<sup>2</sup>

The registrant also asks how to calculate the value of the books for purposes of chapter 305. See [Ethics Advisory Opinion No. 46](#) (1992). The lobbyist should report the greater of the fair market value of the books or the actual cost of developing, writing, producing, and distributing the books. The requestor asks if a particular staff member's pay should be included or if the pay is "irrelevant" since the staff member is paid whether a book is written or not. The staff member's pay is not irrelevant. The amount of the staff person's compensation to be included in the calculation should be based on the portion of the person's total work that is attributable to the book.

The requestor also states that the books might be "sold for the exact unit cost of development and publication." If the books are sold to members of the legislature at the actual cost of writing, developing, publishing, and distributing the books, then such distribution would not be reported on a lobby activity report as a "gift."

### SUMMARY

A registered lobbyist is not prohibited from giving free books to legislators, but a registrant is prohibited from giving, and a legislator from accepting, "an expenditure or series of expenditures for gifts that in the aggregate exceed \$500 in a calendar year." The lobbyist must report any such gift. The lobbyist should report the greater of the fair market value of the books or the actual cost of developing, writing, producing, and distributing the books. A registered lobbyist is not prohibited from selling legislators books for the actual cost of writing, developing, publishing, and distributing the books. Such a sale is not a "gift" and would not have to be reported under the lobby statute.

<sup>1</sup> Because the requestor asks about the gifts in the context of the lobby statute, we assume that the registrant is giving the books to legislators to facilitate communications with members of the legislative branch to influence legislation. *See* Gov't Code § 305.006. Because expenditures for the books are required to be reported under the lobby statute, they are not political contributions for purposes of title 15 of the Election Code. Elec. Code § 251.001(2) (defining "contribution"); [Ethics Advisory Opinion No. 46](#) (1992) (discussion of relationship between lobby statute and title 15 of Election Code).

<sup>2</sup> The Penal Code contains a general prohibition against a legislator's acceptance of benefits. However, this general prohibition is inapplicable to gifts given by persons required to be registered and to report under Government Code chapter 305, the lobby statute. Penal Code § 36.08, 36.10. Gifts are not permissible if given in consideration for specific action by the legislator. *Id.* § 36.02.