



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 69

October 23, 1992

Whether a state college or university is a "person" for purposes of chapter 36 of the Penal Code. (AOR-71)

The Texas Ethics Commission has been asked to consider whether a state college or university is a "person" for purposes of chapter 36 of the Penal Code and, if so, whether a state college or university may give a state legislator free tickets to concerts, plays, lectures, or athletic events.

Subsection (f) of section 36.08 of the Penal Code provides:

A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit *from any person*. (Emphasis added.)

See also Penal Code §§ 36.09(a) (a person may not offer a benefit to a public servant who he knows is prohibited by law from accepting it), 36.10 (exceptions from prohibitions set out in sections 36.08 and 36.09).¹ For purposes of the Penal Code, "person" is defined as "an individual, corporation, or association." *Id.* § 1.07(a)(27). "Association" includes "a government or governmental subdivision or agency." *Id.* § 1.07(a)(5). A state college or university is a governmental agency and is therefore a "person" for purposes of section 36.08(f) of the Penal Code. *See generally* [Ethics Advisory Opinion No. 31](#) (1992) (state university is "state agency" for purposes of chapter 305 of the Government Code). Therefore, a legislator may not accept a "benefit" from a state university unless one of the exceptions set out in section 36.10 is applicable.

The main focus of the request is whether tickets to intercollegiate athletic events are "benefits." The Penal Code defines "benefit" as "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). As a general rule, tickets to intercollegiate athletic events are benefits.² *See generally* [Ethics Advisory Opinions Nos. 66, 63, 62, 61, 60, 51, 36](#) (1992) (regarding meaning of "benefit").

As indicated, above, however, there are several exceptions to the prohibitions set out in sections 36.08 and 36.09. The exceptions applicable here are for entertainment accepted as a "guest." Penal Code § 36.10(b), (c). Under section 36.10(b), a public servant who solicits or accepts a benefit of entertainment is excepted from the prohibition on the acceptance of benefits if the public servant accepts the entertainment as a guest and complies with any applicable reporting requirement.³ To satisfy the "guest" requirement, the host must be present. [Ethics Advisory Opinion No. 12](#) (1992). For a state college or university to satisfy the presence requirement, an individual officer or employee of the university acting as host must be present.

The requestor asks whether the presence of university officers and employees in the stadium satisfies this requirement if no individual officer or employee has direct contact with the legislator receiving free tickets. Although we do not think it is necessary for the individual host to sit next to the legislator, the individual host

must have some direct contact with the legislator, and the guest and host must be in reasonable physical proximity and have easy access to each other during the game.

The requestor also asks about a state college or university giving legislators free tickets to plays, concerts, and lectures and providing pre-game receptions and parking passes for the events. Plays, concerts, and lectures are "entertainment" for purposes of chapter 36 of the Penal Code. Thus the previous discussion regarding football tickets is applicable to tickets to such events. A pre-game reception and a parking pass to be used in connection with a specific entertainment event would be considered part of the entertainment event for purposes of section 36.10 of the Penal Code. *Cf. Ethics Advisory Opinion No. 29* (1992) (for purposes of lobby reporting, a fee waiver must be reported under the various applicable categories).

SUMMARY

A state college or university is a "person" for purposes of the Penal Code. Therefore, various prohibitions in section 36.08 of the Penal Code on public servants' acceptance of benefits from any "person" apply to the acceptance of benefits from state colleges and universities. As a general rule, tickets to intercollegiate athletic events are benefits. For a state college or university to satisfy the "guest" exceptions in section 36.10 of the Penal Code in regard to athletic events, an individual officer or employee must have some direct contact with the legislator, and the guest and host must be in reasonable physical proximity and have easy access to each other during the game.

¹ Chapter 305 of the Government Code regulates expenditures made for the benefit of members of the legislative and executive branches by a "person" required to register under that act. "Person," under the lobby statute, includes "an individual, corporation, association, firm, partnership, committee, club, organization, or group of persons who are voluntarily acting in concert." Gov't Code § 305.002(8). Although "association" is defined in the Penal Code to include governmental bodies, chapter 305 contains no such definition. We do not think that "association," as generally understood, or any other term used in section 305.002(8) to define person, includes a governmental body. Also, officers and employees of governmental bodies are specifically exempted from lobby registration requirements. *Id.* § 305.003(b); Tex. Ethics Comm'n, 17 Tex. Reg. 4444 (1992) (to be codified at title 1, section 40.1, of the Texas Administrative Code). That exemption supports the view that government bodies themselves are not required to register under the lobby statute. Gov't Code § 305.0051 (Ethics Commission *may* require reporting by government officers and employees); Acts 1991, 72d Leg., 1st C.S., ch. 19, art. V, § 5, at 1004 (prohibition on use of appropriated funds to influence election or legislation). Information about expenditures by a governmental body is available to the public under the Open Records Act. V.T.C.S. art. 6252-17a.

² Whether tickets to other events are benefits is a fact question to be determined on a case-by-case basis.

³ Subsection (c) is a similar exception for the donor. In order for either exception to apply, any applicable reporting requirements must be met. If the donee is a legislator, the legislator must report the tickets on his annual financial disclosure statement filed under V.T.C.S. article 6252-9b if the tickets exceed \$250 in value. V.T.C.S. art. 6252-9b, § 4(c)(7). Because the donor in the situation at hand is a state college or university and therefore not required to register under the lobby statute, there is no reporting requirement applicable to the donor.