



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 71

October 23, 1992

Whether a charitable contribution by a registered lobbyist is a reportable lobby expenditure. (AOR-77)

A representative of a charitable organization¹ has asked the Texas Ethics Commission about a proposed fundraising event. The charitable organization plans to sponsor a golf tournament. Legislators and legislative staff members would serve on a "host committee" for the tournament. Registered lobbyists and corporate representatives would also serve on the committee. Committee members would participate free of charge in the tournament, luncheon, and post-tournament reception. All participants, including the committee members, would receive gift packets consisting of items "such as shirts, visors, and golf balls."

The corporations whose representatives sit on the committee and the registered lobbyists who sit on the committee would make contributions to the charity. Those contributions would be used to pay the costs of the tournament. This raises the question of whether a registered lobbyist must report the contribution to the charitable organization as a lobby expenditure if the contribution is made in order to communicate with legislators and legislative staff to influence legislative action. *See Ethics Advisory Opinions Nos. 34, 4* (1992) (regarding communications to influence).

Under chapter 305 of the Government Code, a lobbyist must report certain types of expenditures made to communicate with members of the legislative branch to influence legislation. Gov't Code § 305.006; *see id.* §§ 305.002(6) (defining "legislation"), 305.002(7) ("member of the legislative branch" includes legislative staff). Expenditures made for the following purposes must be reported: (1) transportation and lodging, (2) food and beverages, (3) entertainment, (4) gifts, other than awards and mementos, (5) awards and mementos, and (6) expenditures made for the attendance of members of the legislative or executive branch at political fundraisers or charity events. *Id.* § 305.006(b); *see also id.* § 305.006(c) (expenditures for mass media communications). In the situation described the charitable organization may use some portion of the donations it receives for several of those purposes, and a lobbyist who makes a contribution may use the fundraiser as an opportunity to communicate with members of the legislative branch to influence legislation. Nonetheless, we do not think a lobbyist's contribution to a charity can be characterized as a reportable lobby expenditure as long as the lobbyist does not earmark the donation for one of the purposes listed.

The requestor also asks whether it is permissible for a legislator or legislative staff member to participate in the event described. A legislator or legislative staff member would be receiving from the charitable organization a gift packet as well as the opportunity to play golf and attend a reception. The requestor states that the charitable organization will not be providing these things with an intent to influence legislative action. If that is the case, the lobby statute does not apply to the provision and acceptance of these things by the charitable organization. Various provisions in chapter 36 of the Penal Code, however, would be relevant.

Under the Penal Code a legislator or legislative staff member is prohibited from accepting any benefit from any person. Penal Code § 36.08(f). 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); *see Ethics Advisory Opinions Nos. 63, 62, 61, 60, 36* (1992) (defining "benefit"); *see also* Penal Code § 36.02 (bribery); *Ethics Advisory Opinion No. 60* (1992) (discussing bribery). Although food

and entertainment may be benefits, the prohibition set out in section 36.08(f) does not apply to food or entertainment if the food or entertainment is accepted as a guest and if the food or entertainment is reported by the donee if there is an applicable reporting requirement.² In order for a legislator or staff member to accept the golf games and reception as a "guest," an officer, member, or employee of the host organization must be present. See [Ethics Advisory Opinions Nos. 69, 12](#) (1992). As to complying with any applicable reporting requirement, the legislator would have to report the event on his annual financial disclosure statement filed under article 6252-9b, V.T.C.S., if the total value of the things provided at the event to the legislator exceeded \$250.³ An employee of the legislature would not be subject to a reporting requirement.⁴

The gift packet, as described, would likely be a benefit. The requestor also states that prizes may be awarded on the basis of a drawing or on golf performance by participants. The legislators and legislative staff members would be eligible for these prizes because they are participants. Further, they are participating free of charge because of their official status. In those circumstances, they may not accept any prize from the charitable organization that is a benefit.

SUMMARY

A registered lobbyist is not required to report a contribution to a charitable organization as a lobby expenditure even if the charitable organization uses part of the contribution for one of the purposes set out in section 305.006(b) of the Government Code as long as the lobbyist does not earmark his contribution for that purpose.

¹ In this instance there is no question that the organization is a well-recognized and reputable charity.

² There is also an exception to the prohibitions set out in section 36.08 for "a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient." Penal Code § 36.10(a)(2). This exception would not be applicable here since the legislators and legislative staff members are apparently asked to serve on the host committee because of their official status.

³ "Gift," for purposes of article 6252-9b, is a broader category than "gift" for purposes of chapter 36 of the Penal Code or chapter 305 of the Government Code.

⁴ The charitable organization is prohibited from offering a legislator or legislative staff member a "benefit" that the charitable organization knows the legislator or legislative staff member is prohibited from accepting. Penal Code § 36.09. This prohibition is inapplicable to food and entertainment accepted as a guest and reported by the donor if there is an applicable reporting requirement. The charitable organization is not subject to a reporting requirement under any of the statutes interpreted by the Ethics Commission.