



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 75

October 23, 1992

Whether a city's provision of certain goods and services to legislators is prohibited under chapter 36 of the Penal Code. (AOR-103)

A city has asked the Texas Ethics Commission whether it may provide certain goods and services to state legislators. Specifically, the city has asked about providing a luncheon for certain members and their spouses, free parking, free use of recreational facilities, free library cards, free informational pamphlets, and "assistance in securing water/wastewater and electric connections."

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). 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 city is therefore a "person" for purposes of section 36.08(f) of the Penal Code. *See Ethics Advisory Opinions Nos. 69, 36* (1992). Thus, under chapter 36 of the Penal Code, a legislator may not accept a "benefit" from a city unless one of the exceptions set out in section 36.10 is applicable.¹

The crux of the city's request is whether the goods and services described above are "benefits." 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). *See Ethics Advisory Opinions Nos. 69, 66, 63, 62, 61, 60, 51, 36* (1992) (considering meaning of term "benefit").

One of the city's questions is about providing a luncheon for certain members of the legislature and their spouses. Food and beverages may be "benefits." *See Ethics Advisory Opinions Nos. 62, 60* (1992). 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 if the city and the legislator comply with any reporting requirements.² Penal Code § 36.10(b), (c). *See generally Ethics Advisory Opinion No. 12* (1992) (discussing "guest" exception to prohibitions set out in section 36.08). For a legislator to accept a luncheon as a "guest," an officer or employee of the city must be present at the luncheon. *See generally Ethics Advisory Opinion No. 69* (1992).

The city also provides a decal for display in a car to permit unlimited free parking in metered spaces and at the city's airport. If a car is "inadvertently issued a ticket," the city states, "the City's Intergovernmental Relations Officer requests the ticket be removed from the computer system." Such unlimited free parking is reasonably

regarded as a pecuniary advantage and is therefore a benefit. Thus a city may not provided unlimited free parking to legislators or "remove" legislators' parking tickets from the computer system.

The city has also asked about providing free use of city tennis courts and golf courses to legislators. City residents are charged a fee for use of such facilities. Unlimited free use for legislators is a benefit. Because it is a benefit in the form of entertainment, however, it maybe permissible under the "guest" exception described above.

Another question is about the provision of free library cards. Residents of the city pay no special fee for library cards; non-residents pay \$35. Whether a free library card in these circumstances is a benefit depends on whether it is within the authority of the city to treat legislators as residents. Such a determination is outside the scope of the Ethics Commission's authority.

The city's remaining questions are about free informational pamphlets and "assistance in securing water/wastewater and electric connections." A "pamphlet" containing information about the city and city services and amenities would generally not be a benefit. *See generally* [Ethics Advisory Opinions Nos. 62, 61, 36](#) (1992). Whether "assistance in securing water/wastewater and electric connections" is a benefit depends on the specific nature of the assistance.

SUMMARY

A city is a "person" for purposes of the Penal Code. Therefore, a legislator may not accept a "benefit" from a city unless one of the exceptions set out in section 36.10 of the code is applicable. Unlimited free parking at a city airport or in metered spaces is a benefit. Unlimited free use of golf and tennis facilities is a benefit.

¹ This opinion considers only whether the provision of a benefit or other perquisite is permissible under chapter 36 of the Penal Code. This opinion does not consider whether any particular transfer of goods or services is otherwise within a city's legal authority. Such questions are outside the scope of this commission's authority.

² Under the statutes administered by the Ethics Commission there is no reporting requirement applicable to the city in the situation described. *See* [Ethics Advisory Opinion No. 69](#) (1992) (city not required to register under lobby statute). A legislator would have to report the luncheon on a financial disclosure statement if the value of the luncheon were in excess of \$250. V.T.C.S. art. 6252-9b, § 4(c)(7).