



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 80

November 5, 1992

*Acceptance of reimbursement for airline tickets by a state representative. (AOR-38)*

The Texas Ethics Commission has been asked to consider whether a member of the House of Representatives may accept payments in the amount of the cost of certain airline tickets and, if so, how the payments are to be reported. The state representative in question first flew from his home city to another Texas city to meet with an officer of a state agency in regard to a matter relevant to economic development in the legislator's district. The state representative used political contributions to pay for that ticket. *See* Elec. Code § 251.001(5) (defining "political contribution"). The state representative then flew from that city to Austin to attend to legislative matters. The state representative used his own money to pay for that ticket. A private entity has offered to pay to the state representative an amount equal to the cost of the tickets for those trips. The private entity has an interest in the matter that occasioned the first leg of the trip. Because the state representative used political contributions to pay for one of the flights in question and personal funds to pay for the other, each flight raises different questions. Therefore, we will consider each flight separately.

The state representative paid for the first flight out of political contributions. The purpose of the trip, as described, was to discuss with a state agency a matter of concern to constituents. Such a trip would be an activity in connection with the office of a state representative. Therefore, it was permissible to use political contributions to pay for the trip. *See* Elec. Code § 253.035 (prohibiting conversion of political contributions to personal use). Because the state representative paid for the ticket with political contributions, not personal funds, a payment to the state representative personally in the amount of the ticket for that flight would be a prohibited cash gift. Penal Code § 36.08(f); Gov't Code § 305.024(a)(2).<sup>1</sup> The state representative could, however, accept a payment in the amount of the ticket as an "officeholder contribution" or, if the state representative has a campaign treasurer appointment in effect, as a campaign contribution.<sup>2</sup> An "officeholder contribution" is a contribution to an officeholder offered or given with the intent that it be used to defray expenses that "are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office" and "are not reimbursable with public money."<sup>3</sup> Elec. Code § 251.001(4)(A), (B). A "campaign contribution" is a contribution given "with the intent that it be used in connection with an election." *Id.* § 251.001(3). An officeholder may accept a campaign contribution only if he has a campaign treasurer appointment in effect. *Id.* § 253.031(a).

The request letter does not state whether the entity offering the payment is a corporation. In most cases, a corporation may not make and the legislator may not accept a campaign or officeholder contribution. *See* Elec. Code §§ 253.094 (prohibition on corporate contributions), 253.003(b) (providing that a person may not knowingly accept a political contribution the person knows to have been made in violation of chapter 253 of the Election Code); *see also id.* §§ 253.091, 253.092, 253.093. The request letter does not state whether the private entity offering the payment is a corporation. *See* Attorney General Opinion MW-178 (1980) (professional associations and professional corporations are not prohibited from making campaign contributions).

If the state representative accepts a payment as an officeholder contribution or a campaign contribution, he must report it in accordance with title 15 of the Election Code. In the situation described, the state representative would report the purchase of the ticket as a political expenditure and include the amount of the purchase, the full name and address of the person to whom the payment is made, and the date and purpose of the payment.<sup>4</sup> *Id.* §

254.031(a)(3). The state representative would report the payment from the private entity as a political contribution and include the amount and date of the contribution and the name and address of the contributor. *Id.* § 254.031(a)(1).

For the flight to Austin, the state representative used personal funds to purchase the ticket. Thus repayment to the state representative personally would mean, in effect, that the private entity was paying for the transportation. Such payment would be a prohibited benefit. Penal Code § 36.08(f).<sup>5</sup> Again, however, the state representative could accept an officeholder contribution or a campaign contribution in the amount of the cost of the ticket, if he has a campaign treasurer appointment in effect. If the state representative accepts the payment as an officeholder contribution or a campaign contribution, the payment must be reported as described above.

Because the state representative paid for the ticket out of personal funds, a question arises about personal reimbursement from political funds. As discussed above, the purchase of the ticket would qualify as an officeholder expenditure if the ticket is not reimbursable with public funds. In that case, the state representative could accept personal reimbursement from his political funds if the expenditure was properly reported. If the expenditure for the ticket was reported as a political expenditure from personal funds subject to reimbursement, the state representative may reimburse himself from his political funds for the cost of the ticket. Elec. Code §§ 253.035(h), 253.042 (limitations on such reimbursements); *see also id.* § 251.001(9)(A), (B) (defining "officeholder expenditure"). If the state representative did not report the expenditure for the ticket in accordance with section 253.035(h), the state representative may not reimburse himself from political funds.

## SUMMARY

Payment to a state representative personally in the amount of a ticket paid for out of political funds would, in the circumstances described, be prohibited. Payment to a state representative personally in the amount of the cost of a ticket paid for out of personal funds would be a prohibited benefit.

As long as a payment is not given as consideration for the state representative's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, the state representative may accept an officeholder contribution or a campaign contribution in the amount of the cost of the ticket.

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<sup>1</sup> It is important to note here that the facts, as described, indicate that the private entity's payment to the legislator would not be a lobby expenditure on the part of the private entity. Apparently, the private entity wants the state representative to influence the state agency. There is no indication that the private entity is making the expenditure to communicate with the state representative to influence legislation. If that is the private entity's purpose, however, the private entity could pay for the state representative's transportation only if the trip can be characterized as a "fact-finding trip." *See* Gov't Code § § 305.024(a)(3), 305.025(a)(3).

<sup>2</sup> If the payment were made as consideration for the state representative's opinion, recommendation, or other exercise of discretion as a public servant, the payment would be a prohibited bribe.

<sup>3</sup> *See* generally Tex. Const. art. III, § 24(c) (mileage for legislators); V.T.C.S. art. 6823a, § 7 (regarding travel expenses for state officials). The policy and procedure manual of the House Office of Administration contains guidelines about reimbursable travel.

<sup>4</sup> We assume that the cost of the tickets exceeds \$50. *See* Elec. Code § 254.031(a)(1), (3) (reporting requirements applicable to contributions and expenditures exceeding \$50).

<sup>5</sup> The request letter does not indicate that any member of the organization accompanied the state representative on the trip. Therefore, we need not consider whether the "guest" exception in section 36.10(b) of the Penal Code would apply. *See Ethics Advisory Opinions Nos. 77, 12* (1992) (discussing "guest" exception to prohibition on acceptance of benefit).