



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 87

November 5, 1992

Whether a registered lobbyist may give works of art to members of the legislature. (AOR-116)

A registered lobbyist has asked whether he may give works of art to members of the legislature. Both chapter 305 of the Government Code, which regulates lobby activity, and chapter 36 of the Penal Code are relevant to this question.

Under chapter 305 of the Government Code, a registered lobbyist must report certain types of expenditures made to communicate with a legislator to influence legislation. Gov't Code § 305.006(b). Works of art would be reported under the category for "gifts." *Id.* § 305.006(b)(4). If such a gift exceeds \$50 in value, the lobbyist must report the name of the legislator to whom he gave the work of art, a description of the work of art, and the amount of the expenditure. *Id.* § 305.0061(c). A lobbyist may not give a legislator a gift or series of gifts that exceed \$500 in value in a calendar year. *Id.* § 305.024(a)(5). The requestor states that he would report the gifts as lobby expenditures and that the gifts to an individual legislator would not exceed \$500 in a calendar year.

Several provisions in the Penal Code also apply to the offer and acceptance of gifts. Under sections 36.08(f) and 36.09 of the Penal Code, a person is prohibited from offering, and a legislator is prohibited from accepting, any "benefit." 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).¹ The prohibitions in section 36.08 and 36.09 do not apply, however, to a gift that is required to be reported under the lobby law. *Id.* § 36.10(a)(5).

Also, under section 36.02 of the Penal Code, the bribery statute, a person may not offer, confer, or agree to confer on a legislator--and a legislator may not solicit, accept, or agree to accept--a "benefit" as consideration for the legislator's "decision, opinion, recommendation, vote, or other exercise of discretion" as a public servant. *Id.* § 36.02(a)(1). If all the elements of bribery are present, this prohibition is applicable even if the benefit is reported as a lobby expenditure.

SUMMARY

A registered lobbyist must report a lobby expenditure in the form of a work of art for a legislator as a "gift" under chapter 305 of the Government Code.

¹ Many works of art are benefits; whether a particular work of art is a benefit is a fact question. See generally [Ethics Advisory Opinions Nos. 69, 63, 61, 60, 51, 36](#) (1992) (regarding benefits).