



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 88

November 5, 1992

Whether a state university may pay expenses for legislators-elect in connection with a conference for legislators and legislators-elect. (AOR-119)

The LBJ School of Public Affairs at the University of Texas at Austin has asked about payment of expenses for legislators and legislators-elect in connection with a conference for legislators that the LBJ School will co-sponsor with the Texas Legislature. The conference is to be held in December. The request letter states that the conference includes an orientation session for newly-elected legislators that provides "an opportunity for the new members to learn about state budgeting, fiscal management, health and human services and other state operations."

In the past, the University of Texas at Austin has paid expenses for travel, food, and lodging for newly-elected non-incumbent members of the legislature. The reason for this is that the legislature does not pay expenses for non-incumbent legislators-elect who have not yet assumed office. The question raised is whether such reimbursement is prohibited under chapter 36 of the Penal Code.

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 [Ethics Advisory Opinions Nos. 75, 69, 66, 64, 63, 62, 61, 60, 36](#) (defining "benefit"); 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). The Penal Code does not define "member of the legislature." The Texas Constitution, however, provides that senators and representatives take office after their election "on the day set by law for the convening of the Regular Session of the Legislature." Tex. Const. art. III, §§ 3, 4. The day set by law for the convening of the legislature is the second Tuesday in January of odd-numbered years, which will fall on January 12 in 1993. Gov't Code § 301.001. Therefore in December 1992 non-incumbents newly elected to the Texas Legislature in the November 1992 election will not yet be members of the legislature, and the prohibitions set out in section 36.08(f) of the Penal Code will not be applicable to them.¹

The request letter also states that non-appropriated funds are used to provide a luncheon for legislators and legislators-elect. A current member of the legislature may not accept a "benefit" from a state university. [Ethics Advisory Opinion No. 69](#) (1992). The question raised is whether the luncheon is a "benefit."

During the luncheon a paid speaker will discuss ethical issues. The question is whether a state university using state funds to educate legislators and legislators-elect in connection with their state offices is providing a benefit to the legislators. Such a use of state funds for state purposes is not reasonably regarded as a pecuniary advantage to the legislators personally. Therefore, the opportunity to hear the speech is not a benefit. The second question is whether the university may provide the meal to current members of the legislature. Even if the meal

is a "benefit," the legislators may accept it under the "guest" exception to the prohibition on benefits since there will be employees of the University of Texas present at the meal.²

SUMMARY

Non-incumbent legislators-elect are not "members of the legislature" for purposes of section 36.08(f) of the Penal Code. A state university using state funds to furnish a speaker to provide information to state legislators relevant to their official position is not providing a benefit to the legislators for purposes of chapter 36 of the Penal Code.

¹ For purposes of the lobby statute, legislators-elect are "members of the legislative branch." Gov't Code § 305.002(7). Therefore legislators-elect are subject to the restrictions in the lobby statute. *See id.* § § 305.024, 305.025. The University of Texas and its officers and employees are not required to register as lobbyists. *See Ethics Advisory Opinions Nos. 73, 69* (1992). Therefore the lobby statute does not govern transportation, food, or lodging provided to a legislator or legislator-elect by the University of Texas. Also, legislators-elect are "public servants" for purposes of the Penal Code and therefore subject to the bribery prohibitions in section 36.02 of the Penal Code. Penal Code § 1.07(30) (defining "public servant").

² Under section 36.10(b) of the Penal Code, the prohibition on acceptance of benefits set out in section 36.08(f) is not applicable to food "accepted as a guest" and reported in accordance with any applicable reporting requirement. For a legislator to accept a meal from the University of Texas as a "guest," an officer or employee of the university must be present at the meal. *See Ethics Advisory Opinion No. 69* (1992). There would be no applicable reporting requirement in this instance. *See* V.T.C.S. art. 6252-9b, § 4(c)(7) (legislator must report gifts that exceed \$250 in value). *See also* Penal Code § 36.10(c) (application of "guest" exception to donor).