



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 90

December 10, 1992

Application of chapter 36 of the Penal Code and chapter 305 of the Government Code to use of a corporate deer lease by members of the executive and legislative branches. (AOR-33)

A representative of a corporation has asked the Texas Ethics Commission about the corporation's payment of the cost of a deer lease in certain circumstances. The opinion request states that the corporation pays for the deer lease "principally for its employees, family and friends." Each individual who uses the deer lease is "required to share in the cost of food, beverages and animal feed to offset the expenses." There is a ranch house on the lease that is used for eating and sleeping. Occasionally, the requestor states, a member of the executive or legislative branch of state government or a local government official uses the lease. These officials provide their own transportation to the lease, and a firm rule is that "no business related matters will ever be discussed." The requestor has asked whether this practice is permissible under chapter 36 of the Penal Code and chapter 305 of the Government Code.

Section 36.08 of the Penal Code contains prohibitions on the acceptance of benefits by public servants at both the state and local level.¹ See [Ethics Advisory Opinions Nos. 75, 69, 66, 63, 62, 61, 60, 36](#) (1992) (regarding meaning of "benefit"); see also Penal Code § 36.09(a) (making it an offense to offer, confer, or agree to confer a benefit on a public servant that the donor knows the public servant is prohibited from accepting). In the situation described, the corporation would be providing benefits in the form of entertainment (hunting) and lodging.² The prohibitions on the offer and acceptance of benefits do not apply, however, to food, lodging, transportation, or entertainment accepted "as a guest" and reported in accordance with any applicable reporting requirement.³ Penal Code § 36.10(b), (c). For a public servant to accept food, lodging, and a place to hunt "as a guest," the person providing the food, lodging, and place to hunt would have to be present for the hunting trip. [Ethics Advisory Opinion No. 12](#) (1992). In this case that person is a corporation. See Penal Code § 1.07(27) ("person" in Penal Code includes corporation). For a corporation to satisfy the guest exception, a person must be present whose position, authority, or conduct could create corporate liability for exemplary damages. See *Corporate Wings, Inc. v. King*, 767 S.W.2d 485 (Tex. App--Dallas 1989, no writ); [Ethics Advisory Opinion No. 89](#) (1992).

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). If a corporation has a business relationship with a member of the legislative or executive branch that is completely independent of the person's official status, this exception could be applicable in the situation described. Whether the exception is applicable in a particular instance is a fact question that cannot be resolved in an advisory opinion.

Corporate expenditures for food, lodging, and entertainment (hunting) are also subject to regulation under the lobby statute, chapter 305 of the Government Code, if made to communicate with a member of the legislative or executive branch of state government.⁴ The contact involved in making an expenditure for the benefit of a member of the legislative or executive branch may itself be a communication to influence legislation or administrative action, regardless of whether any potential legislation or administrative action is discussed in connection with the expenditure.⁵ See [Ethics Advisory Opinions Nos. 89, 4](#) (1992) (regarding attribution of expenditures to individuals or entities). Thus corporate expenditures of the type listed in section 305.006(b)

made to communicate with a member of the legislative or executive branch to create goodwill toward the corporation are lobby expenditures. *See Ethics Advisory Opinion No. 89* (1992) (regarding attribution of expenditures to entities or individuals).⁶

The request letter describes several different types of expenditures that are reportable under chapter 305. The provision of a hunting lease is an expenditure for entertainment. A person required to register under the lobby statute may not make an expenditure for entertainment for a member of the legislative or executive branch unless the registrant is present. Gov't Code §§ 305.006(f), 305.024(a)(7). In the case of a corporate registrant, this would require the presence of an officer, employee, or stockholder⁷ of the corporation who is himself registered or the presence of a person whose position, authority, or conduct could create corporate liability for exemplary damages. *See Ethics Advisory Opinion No. 89* (1992); *see Corporate Wings, supra*.

If a registrant makes expenditures that exceed \$50 a day for entertainment for an individual member of the legislative or executive branch, the registrant must make a detailed report of the expenditure under section 305.0061. Also, a registrant may not make an expenditure or series of expenditures for entertainment for a member of the legislative or executive branch exceeding \$500 in a calendar year.⁸ Gov't Code § 305.024(a)(4).

The provision of a house to sleep in is an expenditure for lodging. A person required to register under the lobby statute may not confer on a member of the legislative or executive branch an expenditure for lodging. *Id.* § 305.024(a)(3). *See generally Ethics Advisory Opinion No. 12* (1992) (regarding application of chapter 36 of the Penal Code to similar situation).

In regard to expenditures for food and beverages, the request letter states that each participant pays to "offset" the cost of food and beverages. If the corporation is subsidizing the cost of food and beverages, such expenditures would be subject to the reporting requirements set out in sections 305.006, 305.0061, and 305.0062. Again, an expenditure for food and beverages may not be made or accepted unless the registrant is present. Gov't Code §§ 305.006(f), 305.024(a)(7). Further, if a registrant's expenditures for food or beverages for an individual member of the legislative or executive branch exceed \$50 a day, the registrant must make a detailed report of the expenditure under section 305.0061.

SUMMARY

In providing the use of a deer lease to a member of the legislative or executive branch, a corporation may subject itself or its officers or employees to registration and reporting requirements of chapter 305 of the Government Code, even if no business related matters are to be discussed.

For a corporation to satisfy the "guest" requirement under section 36.10 of the Penal Code there must be a person present whose position, authority, or conduct could create corporate liability for exemplary damages.

¹ The applicability of the various prohibitions depends on the status of the public servant and the status of the person offering the benefit. *See, e.g.*, Penal Code § 36.08(d) (prohibiting public servant who exercises discretion in connection with contracts from accepting benefit from person interested in contract).

² The request letter states that individuals who use the lease pay to "offset" the cost of food. This indicates that the corporation may be subsidizing the cost of food. Provision of food in this context may be a benefit. *See generally Ethics Advisory Opinions Nos. 64, 62, 60* (1992) (food considered as benefit).

³ The corporation or its officers or employees may be subject to reporting requirements under chapter 305 of the Government Code. *See p. 3 infra*. State officials may be subject to reporting requirements under article 6252-9b, V.T.C.S. These are the only relevant reporting requirements in the statutes subject to interpretation by the Ethics Commission. *See generally* Local Gov't Code § 159.005(b)(7) (financial disclosure of gifts by certain county and district officers).

⁴ The lobby statute does not apply to expenditures made to communicate with local officials.

⁵ Under the compensation threshold, a person must register if he receives more than \$200 in compensation or reimbursement in a calendar quarter to communicate with a member of the legislative or executive branch of state government to influence legislation or administrative action. Gov't Code § 305.003(a)(2). Thus, if a person is receiving compensation from the corporation to communicate with a member of the legislative or executive branch during the hunting trip in order to create goodwill toward the corporation on the part of that member, that person would be required to register as a lobbyist if his compensation meets the compensation threshold in the lobby law, regardless of whether business is discussed. See [Ethics Advisory Opinions Nos. 89, 4](#) (1992).

⁶ A corporation itself may be required to register as a lobbyist in some circumstances. [Ethics Advisory Opinion No. 89](#) (1992) discusses the application of the registration requirements to entities and to individuals.

⁷ This would include a "member" of a nonprofit corporation.

⁸ In calculating these thresholds, a registrant should use the fair market value of the provision of the hunting lease. See, e.g., *Tex. Dep't of Agriculture, Hunter's Clearinghouse Directory* (Spring 1991).]