



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 94

*December 10, 1992*

*Whether Texas Wing, Civil Air Patrol, may invite certain state officers to a conference and, if so, whether Texas Wing will be required to register as a lobbyist under chapter 305 of the Government Code. (AOR-72)*

The Texas Ethics Commission has been asked whether Texas Wing, Civil Air Patrol, may invite certain state officers to a conference and, if so, whether Texas Wing will be required to register as a lobbyist under chapter 305 of the Government Code. The opinion request states that Texas Wing proposes to invite various state officials to its conference and to provide a banquet and hotel accommodations for up to two nights for those officials.<sup>1</sup>

The Civil Air Patrol is a civilian auxiliary to the United States Air Force. *See* 10 U.S.C. § 9441. Texas Wing is the state division of the Civil Air Patrol in Texas. It is an "organized volunteer group" for purposes of the Texas Disaster Act of 1975, as amended. *See* Gov't Code § 418.004. The Civil Air Patrol receives considerable federal support, and it may receive state funds as part of its emergency relief activities, but it is not a part of the state government. *See id.* § 305.003(b) (excepting from lobby registration members of the judicial, legislative, or executive branch of state government and officers and employees of political subdivisions).

The opinion request states that Texas Wing does not lobby. The test, however, for determining whether lobby registration is required in the situation described is whether the expenditures for the banquet and lodging are made "to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action." *Id.* § 305.003(a)(1); *see id.* § 305.002(4), (7) (defining, respectively, "member of the executive branch" and "member of the legislative branch"). Communications to influence either legislation or administrative action include communications intended to generate goodwill toward Texas Wing among members of the legislative or executive branch in regard to matters that may be the subject of action by the legislature or an executive branch agency. *See id.* § 305.002(1), (6) (defining "administrative action" and "legislation"); [Ethics Advisory Opinion No. 4](#) (1992). If Texas Wing makes the expenditures in question for that purpose<sup>2</sup> the expenditures for lodging at the conference for members of the legislative and executive branches are prohibited. Gov't Code § 305.024(a)(3) (prohibiting lobby expenditures for transportation and lodging); *see id.* § 305.025(3), (4) (exceptions, not applicable here, to prohibitions on lobby expenditures for lodging). Expenditures for food and entertainment are permissible if properly reported and if Texas Wing satisfies the "presence" requirement in the lobby statute. *See id.* §§ 305.006(b), (f), 305.024(a)(7).<sup>3</sup>

Another relevant statute is chapter 36 of the Penal Code. Under chapter 36 of the Penal Code, state officers and employees are subject to prohibitions on the acceptance of benefits.<sup>4</sup> Penal Code § 36.08; *see also id.* § 36.09 (prohibition on offering or giving benefit). The provision of hotel rooms would be a benefit, and the provision of a banquet may be a benefit. *See* [Ethics Advisory Opinions Nos. 75, 69, 67, 66, 64, 63, 62, 61, 60, 36, 29, 12](#) (1992) (defining "benefit"). The Penal Code prohibitions on the acceptance of benefits are not applicable, however, to lodging, food, or entertainment accepted as a guest and reported in accordance with any applicable reporting requirement. Penal Code § 36.10(b); *see also id.* § 36.10(c) ("guest" exception for person offering or giving benefit). In the situation described, the presence of an officer of Texas Wing would satisfy the "guest" requirement.<sup>5</sup> In summary, Texas Wing may provide lodging to members of the executive branch only if the

lodging is not a lobby expenditure and only if the requirements of the "guest" exception in section 36.10 of the Penal Code are met. Texas Wing may provide a banquet to members of the executive and legislative branches if the requirements of the guest exception are met and if the requirements of the lobby statute, if applicable, are met.

## SUMMARY

Texas Wing may provide lodging to members of the executive branch only if the expenditures are not lobby expenditures and only if the requirements of the "guest" exception in section 36.10 of the Penal Code are met. Texas Wing may provide a banquet to members of the executive and legislative branches if the requirements of the guest exception are met and if the requirements of the lobby statute, if applicable, are met.

---

<sup>1</sup> The officials are not rendering a service, such as addressing an audience, at the conference. Penal Code § 36.07(b).

<sup>2</sup> Lobby registration is required if a person spends more than \$200 in a calendar quarter to communicate directly with members of the legislative or executive branch to influence legislation or administrative action. Gov't Code § 305.003(a)(1); Tex. Ethics Comm'n, 17 Tex. Reg. 4444 (1992) (to be codified at title 1, section 40.1, of the Texas Administrative Code). The expenditures described in the request would obviously exceed that threshold.

<sup>3</sup> In order to make expenditures for food and entertainment a lobbyist must be "present" at the event. Gov't Code § § 305.006(f), 305.024(a)(7). Because officers of Texas Wing would be present, Texas Wing would satisfy the "presence" requirement in the situation described. See [Ethics Advisory Opinion No. 89](#) (1992).

<sup>4</sup> The governor, legislators, and legislative employees are subject to a prohibition on the acceptance of benefits from any source. Penal Code § 36.08(f). Other state officials are subject to prohibitions on the acceptance of benefits from specified sources. Id. § 36.08(a), (b), (c), (d), (e), (g).

<sup>5</sup> As to the reporting requirement, certain state officials would be required to report the provision of the banquet and lodging as a gift on a financial disclosure statement filed under section 4 of article 6252-9b, V.T.C.S., if the banquet and lodging exceeded \$250 in value and if the gift was not from a lobbyist. V.T.C.S. art. 6252-9b, § 4(c)(7). Again, a lobbyist may not make an expenditure for lodging in the circumstances described. See Gov't Code § 305.025. If the banquet is a lobby expenditure, Texas Wing, not the recipient, would be required to report it under the lobby statute, and it would not be reported on a financial disclosure statement under article 6252-9b. See V.T.C.S. art. 6252-9b, § 4(c)(7)(C).