



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 97

December 10, 1992

Whether a member of the legislature may accept an engraved clock in appreciation for a speech. (AOR-79)

A member of the legislature has asked the Texas Ethics Commission whether he may accept an engraved clock worth approximately \$50 in appreciation for a speech. A member of the legislature may not accept a "benefit" from any person. Penal Code § 36.08(f). The engraved clock is a benefit.¹ See generally [Ethics Advisory Opinions Nos. 75, 69, 67, 66, 64, 63, 62, 61, 60, 36](#) (1992) (defining benefits).² The prohibition set out in section 36.08(f) does not apply, however, if the donor is required to report the clock as a lobby expenditure under chapter 305 of the Government Code. Penal Code § 36.10(a)(5) (prohibition on benefits does not apply to "a gift, award, or memento" required to be reported under the lobby statute).

Even if the gift is a lobby expenditure and therefore permissible under section 36.10(a)(5), it may be an impermissible honorarium under section 36.07 of the Penal Code, which provides:

- (a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties.
- (b) This section does not prohibit a public servant from accepting transportation and lodging expenses permitted under Section [305.025(4)], Government Code, in connection with a conference or similar event or from accepting meals in connection with such an event.
- (c) An offense under this section is a Class A misdemeanor.

This prohibition is applicable in the situation described if the honorarium is given "in consideration for" the legislator's speech. Nothing in section 36.07 indicates whether the words "in consideration for" refer to contractual consideration³ or whether they are used to mean "in appreciation for." Because the apparent purpose of section 36.07 was to prevent a public servant from reaping profit from outside sources for performing services in his official capacity, we think the prohibition must be read broadly to include any payment--in money or property--for services that the public servant would not have been requested to provide but for the public servant's official position or duties, regardless of whether the payment was an inducement to performance of the services.⁴ Therefore, a legislator may not accept the engraved clock in appreciation for a speech, even if the donor is required to report the gift under the lobby statute, if the legislator would not have been asked to give the speech but for his official position.

SUMMARY

A legislator may not accept an engraved clock in appreciation for a speech, even if the donor is required to report the gift under the lobby statute, if the legislator would not have been asked to give the speech but for his official position.

- ¹ The Ethics Commission has stated that a plaque is not a benefit. [Ethics Advisory Opinion No. 36](#) (1992). A clock does not become a plaque simply because a name is engraved on it.
- ² The request letter does not suggest that the clock is given at a function in honor of the legislator. If so, section 36.10(a)(3) of the Penal Code would be applicable.
- ³ As a matter of contract law, "consideration" is the inducement to a contract. Black's Law Dictionary 211 (6th ed. 1991). See *generally* *McCallum v. State*, 686 S.W.2d 132 (Tex. Crim. App. 1985) (considering meaning of phrase "as consideration for" in bribery prohibition).
- ⁴ Also, because of this apparent purpose, we think section 36.07 would not prohibit a person from accepting something that is not a "benefit" in appreciation for such services. See Penal Code § 36.01(5) (defining "benefit" as anything reasonably regarded as pecuniary gain or advantage); [Ethics Advisory Opinion No. 36](#) (1992) (acceptance of a plaque).