



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 118

February 18, 1993

Acceptance of rides, food, coffee, and seminar tuition by agency employees; acceptance of gifts from agency board members by agency employees. (AOR-127)

A state agency has asked the Texas Ethics Commission to consider questions about the application of the ethics laws to public employees in a number of different situations. The first situation described is one in which an employee of a state agency and a consultant hired by the agency fly in the same plane to attend an out-of-town meeting. The question is whether the staff member may accept from the consultant a free ride between the airport and the meeting. The state would otherwise pay the cost of transportation between the airport and the meeting.

Chapter 305 of the Government Code, which regulates lobby activity, and chapter 36 of the Penal Code, which regulates gifts to public servants, are both relevant to questions about the provision of transportation to state officers and employees. Chapter 36 of the Penal Code and the lobby statute contain different prohibitions in regard to the acceptance of gifts and other expenditures. For a state employee to accept a gift or other expenditure, it must be permissible under both laws. The lobby statute generally prohibits a state employee from accepting an expenditure for transportation from a person required to register as a lobbyist. Gov't Code § 305.024(a)(3). *But see id.* § 305.025(3), (4) (exceptions to general prohibition on lobby expenditures for transportation). "Transportation," for purposes of the lobby statute, however, does not include a local ride. Tex. Ethics Comm'n, 17 Tex. Reg. 4446 (1992) (to be codified at title 1, section 40.27, of the Texas Administrative Code). Therefore even if the consultant pays for the ride in order to communicate with the state employee to influence administrative action, the ride in question would not be prohibited under the lobby statute.

Chapter 36 of the Penal Code prohibits certain state employees from accepting "benefits" from certain persons. Penal Code § 36.08.¹ Even if the ride in question is a benefit, the state employee may accept the ride if the person providing the ride accompanies the state employee. *Id.* § 36.10(b), (c) (prohibition on acceptance of benefits not applicable to transportation accepted as a guest and reported in accordance with any applicable reporting requirement).²

The second question is whether employees of a state agency may accept gifts from agency board members. One prohibition that could conceivably apply in this situation is the one set out in section 36.08(a) of the Penal Code.³ Under section 36.08(a), an agency employee may not accept a benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency. Even if an agency board member is subject to regulation by his own agency,⁴ we do not think the prohibition set out in section 36.08(a) extends to gifts from a board member to an employee subject to the direction of the board.

The third question is whether agency employees may accept meals or refreshments at functions provided by entities that may do business with the board. Both the lobby statute and section 36.08 of the Penal Code may apply to the meals and refreshments in question.⁵ Under either law, though, agency employees may accept meals and refreshments if the person providing the refreshments is present. *See* Gov't Code §§ 305.006(f), 305.024(a) (7); Penal Code § 36.10(b), (c); [Ethics Advisory Opinion No. 12](#) (1992).

The request letter next describes a situation in which agency employees audit the records of political subdivisions. The question raised is whether an employee of the entity being audited may accept a ride to a restaurant from a state agency employee conducting the audit. The lobby statute is not applicable in this situation because the lobby statute does not apply to expenditures made to communicate to local officers and employees. [Ethics Advisory Opinion No. 90](#) at 2 n.4 (1992). Nor does it apply to expenditures made by state employees. Gov't Code § 305.003(b). As to the Penal Code, even if the ride is a benefit, the employee of the local governmental body may accept a ride to a restaurant if the person providing the ride comes along. Penal Code § 36.10(b), (c). *See* discussion p. 2, *supra*.

Another question is whether a consultant may buy a cup of coffee for an agency employee. If the coffee is a lobby expenditure, the consultant must be present in order to buy a cup of coffee for the agency employee. Gov't Code §§ 305.006(f); 305.024(a)(7). A cup of coffee is not a benefit for purposes of chapter 36 of the Penal Code.

The request letter also asks whether agency employees may accept inexpensive handkerchiefs or key rings from persons who do business with the agency. In regard to gifts that are not lobby expenditures,⁶ the Ethics Commission has said that promotional or commemorative items of minimal value that are unsolicited and are not accepted in exchange for any action or inaction on the part of a public servant are not benefits. [Ethics Advisory Opinion No. 61](#) (1992). Therefore, such gifts are not prohibited under section 36.08 of the Penal Code.

A related question is whether agency employees may accept gifts of food delivered to the agency. If the gifts of food are reportable under the lobby statute, agency employees may accept the gifts only if the lobbyist providing the food is present. Gov't Code § 305.006(f); 305.024(a)(7); *see* Penal Code § 36.10(a)(5) (expenditures required to be reported under lobby statute are excepted from prohibitions in section 36.08 of the Penal Code). In regard to gifts of food that are not lobby expenditures, the Ethics Commission has said that perishable foods in small amounts that a donor delivers infrequently to a government office are not benefits if the foods are unsolicited and are not offered or accepted in exchange for action or inaction on the part of a public servant. [Ethics Advisory Opinion No. 62](#) (1992). Therefore, gifts of food that fit that description are not prohibited gifts under section 36.08 of the Penal Code.

The request letter also asks whether the agency may accept the gifts of food and put the food "out in an open place to be enjoyed by all without acknowledging the donor." The lobby statute and chapter 36 of the Penal Code do not apply to gifts given to a state agency. [Ethics Advisory Opinions Nos. 62, 31](#) (1992). Even if a state agency has authority to accept gifts, it may do so only if the gifts can be used in carrying out the agency's mission. *Id.* Distribution of gifts of food to agency employees is generally not part of an agency's mission. *Id.*

The last question is whether an agency employee may accept an invitation to attend a seminar sponsored by a private firm and whether the employee may eat the food provided at the seminar. A state employee who, at the direction of his employing agency, attends a seminar relevant to his job is not obtaining a benefit. [Ethics Advisory Opinion No. 63](#) (1992). Nor is the employee accepting a prohibited lobby expenditure. *Id.* The agency may accept a tuition waiver and food at such a seminar for an employee if it would be permissible for the state agency to pay such expenses.

SUMMARY

A state employee or an employee of a local government body may accept a local ride in the circumstances described.

The prohibition set out in section 36.08(a) of the Penal Code does not apply to a gift from a board member to an employee subject to the direction of the board. A cup of coffee is not a benefit for purposes of chapter 36 of the Penal Code.

A state agency, as opposed to an individual officer or employee of the agency, may accept a gift of food only if the agency can use the food in carrying out its powers and duties. Distribution of food to agency employees would generally not be one of an agency's powers or duties. A state agency may accept a tuition waiver and food at a seminar for a state employee if it would be permissible for the state agency to pay such expenses.

¹ Chapter 36 of the Penal Code contains prohibitions against bribery. Penal Code § 36.02 . Bribery, for purposes of section 36.02, involves the solicitation, offer, or acceptance of a "benefit" in exchange for some official action or inaction. We assume that no bribery is involved in any of the situations described.

² Certain state officers are required to report gifts worth more than \$250 on a financial disclosure statement. V.T.C.S. art. 6252-9b, § 4(c) (7). This requirement is not applicable to employees below the level of executive head of an agency.

³ The lobby statute is not applicable in this situation. See Gov't Code § 305.003(b) (member of the executive branch not required to register).

⁴ An example of a board member subject to regulation by his own agency would be a licensed physician who is a member of the Board of Medical Examiners.

⁵ Again, we do not have enough information to determine whether either chapter 36 of the Penal Code or chapter 305 of the Government Code would be applicable.

⁶ If the gifts are reportable under the lobby statute, they are permissible. See Gov't Code § § 305.0061(c) (detailed reporting in regard to gifts worth more than \$50), 305.0024(a)(4) (\$500 annual ceiling on lobby gifts to individual); see also Penal Code § 36.10(a)(5) (gifts required to be reported under lobby statute are not impermissible gifts under section 36.08 of the Penal Code).