



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 123

February 18, 1993

Whether a state legislator may work for a city as a paid lobbyist to influence the state legislature. (AOR-145)

The Texas Ethics Commission has been asked to consider whether a state legislator may work for a city as a paid lobbyist. The request letter uses the term "lobby" to describe the activity of someone who is paid to influence the state legislature.

A legislator may not accept a "benefit" from any person. Penal Code § 36.08(f); *see id.* § 1.07(a)(5), (27) (a city is a "person"). A payment is a benefit. *See id.* § 36.01(5) (defining "benefit" to include anything reasonably regarded as pecuniary gain or advantage). There is an exception from this prohibition for:

a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant.

Id. § 36.10(a)(1). A payment for influencing the legislature would not be within this exception. Such a payment is not a fee prescribed by law. Nor would a legislator be giving consideration for the fee "in a capacity other than as a public servant" since we think it would be impossible for a legislator to act in a capacity other than as a legislator in attempting to influence the legislature.¹ None of the other exceptions to the prohibition on the acceptance of benefits are applicable here. *See id.* § 36.10. Therefore, a legislator may not accept a fee from a city for lobbying the legislature.

Further, a legislator who agreed to accept a payment to influence his colleagues in the legislature might be committing the offense of bribery, which is defined to include accepting or agreeing to accept from another² "any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant." *Id.* § 36.02(a)(1); *see also id.* § 1.07(a)(30)(A) (defining "public servant"). To influence other members of the legislature, a member would presumably offer opinions or recommendations. If that is the case, the elements of bribery would be present in the circumstances described since the legislator would be taking payment for offering his opinions and recommendations as a legislator.

SUMMARY

A legislator may not accept payment from a city for lobbying the state legislature.

¹ The exception set out in section 36.10(a)(1) also applies to "any other benefit to which the public servant is lawfully entitled." Whatever this refers to, we do not think it applies to a fee for services since fees for services are separately addressed in section 36.10(a)(1) by the language "for which he gives legitimate consideration in a capacity other than as a public servant."

² The term "another" means "another person." Penal Code § 1.07(a)(4). "Person" includes a city. *Id.* § 1.07(a)(5), (27).