



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 125

February 18, 1993

Whether a district judge may accept \$500 for speaking at a conference. (AOR-152)

The Texas Ethics Commission has been asked to consider whether a district judge may accept \$500 for speaking at a conference. A letter from the group sponsoring the conference states that the organization "does not pay faculty compensation to judges for services that the judge would not have been requested to provide but for the judge's official position or duties." The letter states, "To the contrary, we pay judges and lawyers to participate as faculty because of their experience and knowledge, *not* simply because of their *current status* as a judge."

Section 36.07(a) of the Penal Code provides the following in regard to honoraria:

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.

Under that provision, a judge is prohibited from accepting money or any other thing of value for services that he would not have been requested to provide "but for" his official position or duties. *See* Penal Code § 1.07(a)(15), (30) (district judges are "public servants").

Whether the prohibition on honoraria applies in the situation described is a fact question and depends on whether the judge would not have been asked to provide the speech but for his official status. The sponsoring group's statements about its reasons for asking the judge to speak would be one factor for a judge or jury to consider in analyzing whether a payment for the speech was a prohibited honorarium. In this regard, we note that the statement that judges are not requested to speak "simply because of" their official status indicates that the judge's official status is at least a reason for the requests to speak. If a judge's official status is a reason the judge was requested to speak, and if the judge would not have been requested to speak but for his official status, a payment for speaking would be a prohibited honorarium.

SUMMARY

Whether the prohibition on honoraria applies to a payment to a judge who gives a speech is a fact question and depends on whether the judge would not have been asked to provide the speech but for his official status. The statements of the group sponsoring the speech about its reasons for asking the judge to speak would be one factor for a judge or jury to consider in analyzing whether a payment for the speech was a prohibited honorarium.