



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 139

April 28, 1993

*Whether the chair of a legislative committee may buy gifts for legislative staff members and committee members.
(AOR-176)*

The Texas Ethics Commission has been asked to consider whether the chair of a legislative committee may buy gifts for legislative staff members and committee members. The specific question raised has to do with a traditional end-of-session courtesy: committee chairs giving gifts to committee members and legislative staff in recognition of their work.

All members of the legislature as well as legislative staff members are subject to the following prohibition:

A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

Penal Code § 36.08(f). Similarly, a person is prohibited from offering or giving a benefit to a member of the legislature or a legislative staff member if the person knows that the member of the legislature or the legislative staff member is prohibited from accepting the benefit.¹ *Id.* § 36.09. The issue raised here is whether there is an exception to these general prohibitions that is applicable to a gift from a committee chair to a committee member or legislative staff member.

There is an exception to the general prohibition on the offer and acceptance of benefits for

a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient.

Penal Code § 36.10(a)(2).² Although this exception applies to many working relationships, by its terms it applies only to a gift given because of a relationship that is "independent of the official status of the recipient." Strictly speaking, a working relationship that develops among legislators and legislative staff members cannot be said to exist "independent of the official status" of the legislators and legislative staff members. Nonetheless, we do not think the legislature intended to prohibit gifts in contexts that make clear that a gift is given in recognition of a working relationship and not with the intent that the gift promote or discourage a certain resolution of matters that may come before the legislature.

The purpose of the prohibitions on gifts is, we think, to prevent even the appearance that government decisions are influenced by personal gifts to government officers and employees.³ See [Ethics Advisory Opinion No. 130](#) (1993). Gifts that pass from the more powerful to the less powerful--for example, from legislator to legislative staff member--generally do not raise even the appearance that government action is being bought and sold. See [Ethics Advisory Opinion No. 118](#) (1993). Therefore, we conclude that gifts that pass downward in the chain of command and that are given on account of a working relationship may be permissible under the independent relationship exception.

A gift from a chair of a legislative committee to a member of a legislative committee is not a gift that passes downward in the chain of command. Nonetheless, we think there are circumstances in which gifts from a committee chair to committee members would not give rise to an appearance of impropriety. One of those situations is the situation at hand: one in which gifts are presented at the end of a regular session as part of a tradition and all committee members receive identical or equivalent gifts. In this situation gifts from a committee chair to committee members may be permissible under the independent relationship exception.

SUMMARY

Gifts from legislators to legislative staff members and gifts from committee chairs to committee members may be permissible under the Penal Code exception for gifts given on the basis of an independent relationship. Penal Code § 36.10(a)(2).

¹ The prohibition applies to gifts that are "benefits" for purposes of chapter 36 of the Penal Code. Penal Code § 36.01(5) ("benefit" is anything reasonably regarded as pecuniary gain or pecuniary advantage). This request is premised on the assumption that the gifts in question are benefits.

² The prohibitions against the offer and acceptance of benefits by legislators and legislative staff members are not new features of the 1991 changes in the ethics laws . Nor is the language of the exception set out in section 36.10(a)(2) new.

³ The prohibitions on gifts in chapter 36 apply regardless of whether a gift is given with the intent to influence. Penal Code § 36.02 (prohibition against bribery).