



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 148

June 24, 1993

Whether a state legislator may receive a salary for working for a city, and whether a state legislator may receive a fee from a state college or university for teaching if the fee comes from a private, rather than a public, funding source. (AOR-164)

The Texas Ethics Commission has been asked to consider two questions about payments to state legislators. The first question is whether a state legislator may receive a salary for working for a city. State legislators are subject to a general prohibition on the acceptance of benefits. Penal Code § 36.08(f). A benefit is anything reasonably regarded as pecuniary gain or pecuniary advantage. *Id.* § 36.01(5). A salary is a benefit. There is, however, an exception from the prohibition on the acceptance of benefits for a salary for services provided *in a capacity other than as a public servant*. *Id.* § 36.10(a)(1).¹ See generally [Ethics Advisory Opinion No. 123](#) (1993) (legislator may not accept salary for lobbying legislature since legislator cannot do so in a capacity other than as a legislator).

The prohibition on honoraria set out in section 36.07 of the Penal Code is also relevant to this question, and it has a similar affect in the circumstances described. Under that prohibition a state legislator may not accept an honorarium for services that he would not have been asked to provide but for his official position.² See [Ethics Advisory Opinions Nos. 97, 17](#) (1992). Thus, as long as a state legislator is providing services to a city in a capacity other than as a legislator and as long as his official position is not a reason for his employment, a state legislator may accept a salary for working for a city.

The second question is whether a state legislator may receive a fee from a state college or university for teaching if the fee comes from a private, rather than a public, funding source. Under the honoraria provision, the fee would be impermissible if the legislator would not have been asked to teach but for his position as a state legislator. Whether funds come from a public or private source is irrelevant to the application of the honorarium provision. *Id.*

SUMMARY

As long as a state legislator is providing services to a city in a capacity other than as a legislator and as long as the prohibition on honoraria is not applicable, a state legislator may accept a salary for working for a city. Whether funds come from a public or private source is irrelevant to the application of the honorarium provision. Under the prohibition on honoraria a legislator could not accept a fee for teaching if the legislator would not have been asked to speak but for his position as a legislator, regardless of whether the payment comes from a public or private source.

¹ Section 36.07 of the Penal Code contains a prohibition on acceptance of honoraria.

² The request letter asks whether a legislator may receive a salary from a city while the legislature is in session . The prohibition on the acceptance of benefits and the prohibition on honoraria apply regardless of whether the legislature is in session.