



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 152

June 24, 1993

Whether a hearings examiner for a state agency may accept transportation and meals in connection with a presentation to a group whose members may have contested cases pending before the hearings examiner's agency. (AOR-172)

The Texas Ethics Commission has been asked whether a hearings examiner for a state agency may accept transportation and meals in connection with a presentation to a group that may have contested cases pending before the hearings examiner's agency. The requestor indicates that hearings examiners make such presentations to provide information about the agency's specific statutes, rules, and procedures. Because such a presentation would be part of a hearings examiner's job duties, the agency would be authorized to pay certain expenses in connection with a presentation, if necessary.

Several different provisions in chapter 36 of the Penal Code are relevant to this question. Section 36.08 contains various prohibitions on the acceptance of benefits by state employees, including a prohibition specifically applicable to hearings examiners:

A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Section 36.10(b) of this code does not apply to a benefit under this subsection.¹ (Footnote added.)

Penal Code § 36.08(g); *see also id.* § 36.08(a) (prohibiting an employee of a regulatory agency from accepting a gift from a person the employee knows to be subject to regulation by his agency). The issue, then, is whether the meals and transportation in the situation described are prohibited benefits.

In a previous opinion, the Ethics Commission determined that meals, transportation, and lodging provided to a state employee are not prohibited benefits under section 36.08 of the Penal Code if they are permissible under section 36.07, which governs the acceptance of honoraria. [Ethics Advisory Opinion No. 54](#) (1992). Section 36.07 prohibits a public servant from accepting an honorarium for services that would not have been requested "but for the public servant's official position or duties." Penal Code § 36.07(a); Gov't Code § 305.025(4). The prohibition on honoraria does not, however, prohibit a public servant from accepting meals, transportation, and lodging *in connection with a conference or similar event at which the state employee renders substantive services*. Penal Code § 36.07(b). In considering the combined effect of the prohibitions on benefits and the honorarium provision, the Ethics Commission stated that the various provisions of chapter 36 of the Penal Code must be read together and that meals, transportation, and lodging that are permissible under the honorarium provision are not prohibited benefits.

We believe the legislature, by providing that food, transportation, and lodging provided in connection with a conference or similar event are not prohibited [under the honorarium provision], did not intend the provision of these items in connection with the public servant's service under these circumstances to be "benefits."

[Ethics Advisory Opinion No. 54](#) n.2 (1992). A hearings examiner delivering a presentation about agency statutes, rules, and procedures would be rendering substantive services within the meaning of section 36.07(b). Thus provision of transportation and meals to a hearings examiner in the circumstances described would not be prohibited under either section 36.08 or section 36.07 of the Penal Code.²

SUMMARY

A hearings examiner is not prohibited from accepting transportation and meals in connection with a substantive presentation to provide information about the hearings examiner's agency, regardless of whether individual members of the group attending the presentation may have contested cases pending before the agency.

¹ Section 36.10(b) of the Penal Code provides that it is generally permissible for a public servant to accept food, lodging, transportation, and entertainment if it is accepted as a guest and certain reporting requirements are met. See [Ethics Advisory Opinion No. 12](#) (1992). A hearings examiner, however, is prohibited from accepting a benefit from a person appearing before his agency in a contested case or any other interested party even if the benefits are accepted as a guest.

² We note that the request raises a question about the provision of meals and transportation by a group whose members may have contested cases before the state agency. Because meals or transportation in the circumstances described would not be prohibited benefits, we need not consider whether there are circumstances in which the prohibition set out in section 36.08(g)--which applies to benefits from a person who may be interested in agency action-- would apply to a benefit from a group whose members had contested cases before an agency even if the group itself did not.