



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 155

June 24, 1993

Whether a private association may hire a state legislator as an employee. (AOR-178)

An association of educators has asked the Texas Ethics Commission whether it may hire a state legislator as an employee. The request letter describes two situations and asks whether, in those situations, the legislator's role as an employee of the association would be in violation of any law subject to interpretation by the Ethics Commission. This opinion answers only the questions raised and does not consider any other issues that may be raised by the employment in question.

The first question is whether the legislator could carry or "kill" bills on behalf of the association. A legislator may not accept a "benefit" from any person. Penal Code § 36.08(f); *see id.* § 1.07(a)(5), (27) ("person" includes an "association," which includes "two or more persons having a joint or common economic interest." 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 the prohibition on the acceptance of benefits for a fee paid to a legislator for which the legislator gives legitimate consideration in a capacity other than as a legislator. *Id.* § 36.10(a)(1). A payment for carrying or "killing" bills, however, would not be within this exception since a legislator could not carry or "kill" bills in a capacity other than as a legislator. [Ethics Advisory Opinion No. 123](#) (1993). Therefore, a legislator may not accept a salary from a private association for carrying or "killing" bills in the legislature.

Further, a legislator who agreed to accept a payment to influence his colleagues in the legislature might well be committing the offense of bribery, which is defined to include accepting or agreeing to accept from another¹ "any benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant." Penal Code § 36.02(a)(1); *see also id.* § 1.07(a)(30)(A) (defining "public servant").

The second question is whether a legislator may represent members of the association in grievance proceedings before a public university or public community college. A payment for such representation would be permissible under section 36.08(f) of the Penal Code as long as the legislator was acting in a capacity other than as a legislator.

Section 7 of article 6252-9b, V.T.C.S., is also relevant to this question:

(a) No member of the legislature shall, for compensation, represent another person before a state agency in the executive branch of state government unless:

- (1) the representation is made in a proceeding that is adversary in nature or other public hearing which is a matter of record; or
- (2) the representation involves the filing of documents, contacts with such agency, or other relations, which involve only ministerial acts on the part of the commission, agency, board, department, or officer.

For purposes of article 6252-9b, a state agency includes institutions of higher education other than public junior colleges. V.T.C.S. art. 6252-9b, § 2(8)(B). Therefore, the restrictions set out in section 7 would apply to a

legislator's representation of a person in a grievance proceeding before a public university, but not to a legislator's representation of a person in a grievance proceeding before a public junior college.

SUMMARY

A legislator may not accept a salary from a private association for carrying or "killing" bills in the legislature. The restrictions set out in section 7 of article 6252-9b, V.T.C.S., apply to a legislator's representation of a person in a grievance proceeding before a public university, but not to a legislator's representation of a person in a grievance proceeding before a public junior college.

¹ The term "another" means "another person." Penal Code § 1.07(a)(4). "Person" includes an association. Id . § 1.07(a)(5), (27).