



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 173

November 18, 1993

Whether the prohibition against acceptance of an honorarium, as set out in section 36.07 of the Penal Code, is applicable to a public servant in various circumstances. (AOR-189)

The Texas Ethics Commission has been asked whether the prohibition against acceptance of an honorarium, as set out in section 36.07 of the Penal Code, is applicable to a public servant in various circumstances. Section 36.07 provides in part:

(a) 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.

See id. § 36.07(b); [Ethics Advisory Opinion No. 17](#) (1992) (public servant may accept the direct provision of or reimbursement for food, transportation, and lodging connected with a speaking engagement at a conference or similar event).

The requestor first asks whether the prohibition on honoraria applies in a situation in which the invitation to speak is not made "merely because of" the public servant's official status, but because the public servant is a nationally known expert on the topic of the speech. The test for determining whether an honorarium is prohibited is whether the public servant would not have been asked to speak but for his official position. Before accepting a payment for a speech, a public servant should satisfy himself that the payment is not prohibited under that test. [Ethics Advisory Opinion No. 125](#) (1993). Recognition of a public servant as an expert in a particular area would be one factor to consider in analyzing whether a payment for a speech was a prohibited honorarium.

The requestor next asks whether the honorarium prohibition applies to payments for speaking engagements outside the State of Texas, and if the nature of the audience would be relevant to whether payment was prohibited. The prohibition extends to an honorarium for a speaking engagement that is out of state or that is before an audience that has no direct interest in the official duties of the public servant. Irrespective of where the speech is given or who attends the speech, if the public servant would not have been asked to speak but for his official status, a payment for speaking would be a prohibited honorarium. [Ethics Advisory Opinions Nos. 148, 125](#) (1993), [97, 19, 17](#) (1992).

Finally, the requestor asks whether the honorarium provision applies if the public servant is employed by a national speakers' agency to render public speaking services. Although employment by a national speakers' agency would be a factor to consider in determining whether a payment was a prohibited honorarium, such employment would not preclude the application of the honorarium prohibition.

SUMMARY

Texas law prohibits a public servant from accepting an honorarium for services that the public servant would not have been asked to perform but for his or her official position or duties. The location of a speech, the nature of the audience, or the speaker's expertise may be factors to consider in determining whether an honorarium is a prohibited one, but if the public servant would not have been asked to speak but for his official status, a payment for speaking would be a prohibited honorarium.