



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 186

March 25, 1994

Whether a recent amendment to section 36.10 of the Penal Code will make a city's provision of free parking to a member of the legislature permissible under section 36.08 of the Penal Code and, if so, whether there are any applicable reporting requirements. (AOR-191)

The Texas Ethics Commission has been asked to consider whether a recent amendment to section 36.10 of the Penal Code will make a city's provision of free parking to a member of the legislature permissible under section 36.08 of the Penal Code and, if so, whether there are any applicable reporting requirements.

Under section 36.08(f) of the Penal Code a legislator may not accept a benefit from any *person*. See generally Penal Code § 36.10 (exceptions to prohibitions in § 36.08(f)); see also *id.* § 36.09 (prohibiting a person from offering a benefit that a public servant is prohibited from accepting). A previous Ethics Commission opinion stated that a city is a "person" for purposes of the Penal Code and that section 36.08(f) therefore prohibits a legislator from accepting any benefit from a city. [Ethics Advisory Opinion No. 75](#) at 2 (1992). The opinion also concluded that unlimited free parking at a city airport and in metered spaces is a "benefit" for purposes of chapter 36 of the Penal Code. *Id.*

Section 36.10 of the Penal Code provides various exceptions to the prohibitions against the offer and acceptance of benefits by a legislator. None of the exceptions currently listed in section 36.10 permits a city to provide unlimited free parking. The 73d Legislature, however, adopted a new exception for "an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity." S.B. 1067, Acts 1993, 73d Leg., ch. 900, § 1.01, at 3665 (to be codified as Penal Code section 36.10(a) (7)). The new exception takes effect on September 1, 1994. *Id.* § 1.19 at 3708. It will allow a city to provide free parking for legislators on any property or at any facility "owned, leased, or operated" by the city.

The requestor also asks whether the new exception to the gift laws for use of government property (to be codified as Penal Code section 36.10(a)(7)) will conflict with the bribery statute. It will not. Sections 36.08 and 36.09 of the Penal Code, the "gift laws," prohibit the offer and acceptance of benefits; the prohibitions apply regardless of the purpose of the exchange. In contrast, the offense of bribery occurs only if a benefit is solicited, offered, or accepted *in exchange for* a public servant's decision, opinion, recommendation, vote, or other exercise of discretion in an official capacity. Penal Code § 36.02 (emphasis added); [Ethics Advisory Opinion No. 130](#) (1993). Like the other exceptions in section 36.10 of the Penal Code, the new exception for use of government property is an exception to the gift laws; it does not purport to be an exception to the bribery prohibition. The provision of unlimited free parking by a city could be a violation of the bribery law if all the elements of the offense of bribery are present. See generally [Ethics Advisory Opinions Nos. 64, 60](#) (1992). We see no conflict between the new exception to the gift laws and the bribery law.

The last question is whether either a city or a legislator would be required to report to the Ethics Commission the provision of free parking. A city is not required to file reports with the Ethics Commission. See Gov't Code § 305.003(b); [Ethics Advisory Opinions Nos. 112, 69](#) n.1 (1992) (city not required to register or report under lobby law).

Legislators file personal financial disclosure statements with the Ethics Commission under chapter 572 of the Government Code.¹ One category of financial information required to be reported is gifts of "anything of value in excess of \$250" from "a person or other organization." Gov't Code § 572.023(b)(7).² A "person" is an individual or business entity; a "business entity" is a private entity through which business for profit is conducted. *Id.* § 572.002(2), (7). Although chapter 572 does not define "organization," we think the term must be read in connection with "person" to refer to a private, rather than a public, entity. *See generally Stanford v. Butler*, 181 S.W.2d 269 (Tex. 1944) (where specific enumerations are followed by general words, the general words should be construed to include only items similar in nature to the specific items). Therefore, a member of the legislature is not required to report a city's provision of free parking under section 572.023(b)(7) of the Government Code.

SUMMARY

After September 1, 1994, a city's provision of free parking for legislators on any property or at any facility "owned, leased, or operated" by the city will not be prohibited by section 36.08(f) of the Penal Code. Legislators are not required to report a city's provision of free parking on a personal financial statement filed under chapter 572 of the Government Code.

¹ Also, under title 15 of the Election Code, a legislator must report political contributions on periodic reports filed with the Ethics Commission. Elec. Code § 254.031. Cities may not use public funds to make political contributions to individuals. We express no opinion whether a city's provision of free parking to legislators is consistent with the requirement of the Texas Constitution that city funds and tax revenue be used for public purposes. See Tex. Const. arts. III, § 52; VIII, § 3.

² There is an exception for gifts required to be reported under the lobby law, chapter 305 of the Government Code. Gov't Code § 572.023(b)(7)(C). A city, however, is not required to register or report gifts under the lobby law. See Gov't Code § 305.003(b). Further, provisions in chapter 305 applicable to a "registrant" are not applicable to a city.