



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 226

*September 9, 1994*

*Whether two city police officers may accept a cash award in recognition of their contributions for improvements in the justice system. (AOR-253)*

The Texas Ethics Commission has been asked to consider whether two city police officers may accept a cash award in recognition of their contributions for improvements in the justice system. The specific question is whether acceptance of the award is permissible under sections 36.07 and 36.08 of the Penal Code.

The two police officers chosen to receive the award initiated the development of a countywide, multiple-agency program to reduce auto theft. After the program proved to be successful, the supervisor of one of the officers nominated the two officers for an award from a national foundation that recognizes improvements in the administration of justice. The foundation, which is based outside of Texas, has named 10 award winners for 1994. The two Texas police officers will share one \$10,000 award; the nine other award winners are from other states. In addition to providing cash awards, the foundation will pay for transportation, food, and lodging in connection with the awards banquet, which will take place outside of Texas.

Section 36.07 of the Penal Code prohibits public servants, including police officers, from accepting honoraria. *See* Penal Code § 1.07(a)(41) (defining "public servant"). Section 36.07 provides in part as follows:

(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.

Based on the wording of the provision, we conclude that the cash award and expenses at issue here are not prohibited by section 36.07(a).

A payment<sup>1</sup> is prohibited under section 36.07 if it is 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. The prohibition applies to a payment made "in consideration for services" that the public servant would not have been "requested" to provide except for the public servant's official position. We do not think that the cash prize described in the request letter can be considered to be "in consideration" for requested services. We recognized in a previous opinion that "consideration" in section 36.07 of the code does not require that the payment be an inducement to the services provided. [Ethics Advisory Opinion No. 97](#) (1992). In that opinion, we concluded that a payment to a legislator "in appreciation for" a speech the legislator had already given was an honorarium. This situation is different. In this case there is no payment for requested services. The foundation making the award did not request any services or receive direct benefit from the officers' work. Indeed no one "requested" the specific services for which the officers are to be recognized. Their initiative in developing the auto-theft reduction program was presumably a basis for the award. We conclude, therefore, that in the specific circumstances described in the request letter, the payment and the expenses in connection with the banquet do not fall within the scope of the honorarium prohibition in section 36.07 and that the police officers may accept the cash award and the expenses in connection with the banquet without violating section 36.07 of the Penal Code.<sup>2</sup>

The request letter raises not only the honorarium issue, but also the issue whether the police officers would violate section 36.08(a) of the Penal Code by accepting the cash award and the expenses in connection with the awards banquet. Section 36.08(a) provides as follows:

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

*See generally* Penal Code § 36.10 (exceptions to the foregoing provision). This means that a police officer may not accept a "benefit" from a person the police officer knows may be subject to investigation by him or his agency. The first question raised here is whether the foundation awarding the prize and paying the expenses is a "person" subject to investigation by the police officers who have been awarded the prize (or their agency).

The class of persons<sup>3</sup> subject to investigation by a law enforcement agency is large; it certainly includes any individual even suspected of committing a crime within the law enforcement agency's jurisdiction. Nonetheless, although we do not decide the exact outer boundaries of the class of persons subject to investigation by a law enforcement agency in this opinion, we conclude that the class of persons subject to a local Texas law enforcement agency's jurisdiction does not include an out-of-state foundation whose only connection with the law enforcement agency's jurisdiction is the award of a prize to a police officer employed by the agency. Therefore, the police officers may accept the cash award and the expenses in connection with the awards banquet without violating section 36.08(a) of the Penal Code.

### SUMMARY

In the specific circumstances described in this opinion, an award to police officers from a national foundation is not a prohibited honorarium under section 36.07 of the Penal Code, nor is it a prohibited benefit under section 36.08(a) of the Penal Code.

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<sup>1</sup> We recognize that the statute uses the word "honorarium" and not "payment." We need not consider the meaning of the term "honorarium" in this opinion, however, because we conclude that the cash award is permissible in this situation, based on other language in section 36.07. *See generally* [Ethics Advisory Opinion No. 192](#) n.4 (1994).

<sup>2</sup> A person does not avoid application of the honorarium prohibition simply by calling a payment a "prize" or stating that a payment is "in recognition" of something rather than "in consideration" for something. In this situation, however, we think those terms accurately reflect the facts described in the request letter.

<sup>3</sup> In the Penal Code "person" means an individual, corporation, or association. Penal Code § 1.07(a)(38). The foundation described in the request letter is incorporated and is therefore a "person" for purposes of section 36.08(a).