



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 228

October 14, 1994

Whether a legislator may serve on the board of a private, nonprofit organization and, if so, whether the legislator may accept travel reimbursements and meals connected with service on the board from the private organization. (AOR-254)

The Texas Ethics Commission has been asked whether a legislator may serve on the board of a private, nonprofit organization and, if so, whether the legislator may accept travel reimbursements and meals connected with service on the board from the private organization. The requestor also asks if the legislator may vote on legislation that may affect the private organization. The private organization, which provides assistance to certain indigents, currently receives grants from two different state agencies. State funds are not the source of money used to reimburse the travel expenses of board members or to pay for the dinner provided at the board meetings. Board members do not receive compensation for service on the board.

The laws subject to interpretation by the Ethics Commission do not prohibit a legislator from holding a position on the board of a private organization.¹ See generally [Ethics Advisory Opinion No. 174](#) (1993) (senator may serve on board of trustees of private college). Chapter 572 of the Government Code does provide, however, that a state officer should not engage in any activity that would be in substantial conflict with the proper discharge of his duties in the public interest. Gov't Code § 572.051.²

Chapter 36 of the Penal Code contains a provision prohibiting a legislator from accepting certain benefits. Penal Code § 36.08(f). The acceptance of a meal, however, is permissible under several different exceptions to the prohibition.³ See Penal Code § 36.10(a)(6) (exception for non-cash items worth less than \$50), 36.10(b) (exception for benefit accepted as a guest and reported if reporting required by other law). See generally [Ethics Advisory Opinion No. 12](#) (1992) (for a donee to accept something as a "guest," donor must be present).

In addition, section 36.07 of the Penal Code provides that a state employee may not accept an honorarium for services that the public servant would not have been requested to provide "but for the public servant's official position or duties." Assuming without deciding that section 36.07 is applicable, we note that there is an exception to that prohibition for the acceptance of the expenses of food, transportation, and lodging in connection with "a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory" Penal Code § 36.07(b). We think that exception would apply to food and transportation expenses in connection with a board meeting as long as the legislator's role on the board is more than "merely perfunctory."

Chapter 572 also prohibits a member of the legislature from voting on certain measures or bills affecting a business entity if he has a controlling interest in the entity. Section 572.053(a) provides: "A member of the legislature may not vote on a measure or a bill, other than a measure that will affect an entire class of business entities, that will directly benefit a specific business transaction of a business entity in which the member has a controlling interest." That provision is inapplicable in this instance because, for purposes of chapter 572, a "business entity" is an entity through which business *for profit* is conducted. Gov't Code § 572.002(2); [Ethics Advisory Opinion No. 174](#) n.4 (1993).

SUMMARY

There is no general prohibition against a legislator serving on the board of a private entity. The legislator should be aware, however, of the restrictions in chapter 36 of the Penal Code and in chapter 572 of the Government Code.

¹ There may be laws outside of the commission's jurisdiction that would be applicable. For example, article III, section 18, of the Texas Constitution prohibits a legislator from being interested in a contract with the state that was authorized by any law during a term for which he was elected. Questions about conflicts of interest related to laws not subject to interpretation by the commission should be addressed to the attorney general. *See, e.g.*, Attorney General Opinions JM-1006 at 6 (1989) (county judge may not sit on board of directors of nonprofit corporation established to treat indigent AIDS patients if corporation does business with county), JM-782 (1987) (federal funds appropriated to state Highway Department for distribution to local transit system that employed legislator was not the type of "contract with the state" article III, section 18, was intended to prevent), H-1309 (1978) (generally discussing common law principals prohibiting certain types of conflicts of interest).

² Compliance with the provisions in section 572.051 is a matter of personal ethics. [Ethics Advisory Opinion No. 156](#) (1993). *See also* Attorney General Opinion H-614 at 6 (1975) (Texas House of Representatives is appropriate body for determination of whether violation has occurred of section 8, article 6252-9b, the predecessor statute to Government Code chapter 572).

³ We note that in most circumstances a legislator may not accept transportation from a lobbyist. Gov't Code § 305.024(a)(3). We assume that the private organization at issue here is not required to register as a lobbyist.