



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 252

February 24, 1995

Application of the laws under the jurisdiction of the Texas Ethics Commission to a situation in which the spouse of a member of the legislature receives payment from a registered lobbyist for "the performance of contractually agreed-upon work." (AOR-282)

The Texas Ethics Commission has been asked about the application of the laws under the jurisdiction of the Ethics Commission to a situation in which the spouse of a member of the legislature receives payment from a registered lobbyist for "the performance of contractually agreed-upon work." The request letter describes the specific situation in question as follows:

A person who is married to a member of the legislature or the executive branch registers as a lobbyist under Chapter 305 of the Government Code. This person ("spouse") shares office space and office expenses with at least one other lobbyist. In addition to developing a personal clientele, the spouse also enters into a contractual work arrangement with one of the lobbyists with whom the spouse shares office expenses. The contracting lobbyist pays the spouse an agreed-upon monthly sum for bona-fide lobbying work (i.e., assisting the registrant on client matters).

The request letter first asks whether the lobbyist's payments to the spouse are prohibited either under section 36.08(f) of the Penal Code or under section 305.024 of the lobby law.¹

A member of the legislature is subject to a general prohibition on the acceptance of a benefit from any person. The prohibition extends to *the legislator's acceptance* of a benefit for his or her spouse. See Penal Code § 36.01(3) (defining "benefit"). Whether a legislator in fact accepts something provided to the legislator's spouse is a fact question. The prohibition does not extend, however, to the acceptance of a benefit by the spouse.

Section 305.024(a)(2) provides that a lobbyist may not offer, confer, or agree to confer a gift of cash or a negotiable instrument *to a member of the legislative or executive branch*. Even if the prohibition in section 305.024(a)(2) extended to a gift to *the spouse* of a member of the legislature,² the prohibition on "gifts" in section 305.024(a)(2) would not be applicable here. In our opinion, the term "gift" does not apply to a payment for "the performance of contractually agreed-upon work."

The second question is whether it is permissible for the spouse to share office expenses with a lobbyist as long as the spouse's payments to the lobbyist "accurately reflect the accrual of actual expenses and there is no subsidy on the part of the registrant." The laws subject to the jurisdiction of the Ethics Commission do not prohibit such an arrangement.

The last question is whether section 572.024 of the Government Code requires a legislator to report payments to the legislator's spouse from a lobbyist on the annual personal financial disclosure statement filed under Government Code section 572.021. Section 572.024 provides as follows:

A state officer who receives a fee for services rendered by the officer to or on behalf of a [lobbyist], or to or on behalf of a person or entity that the officer actually knows directly compensates or

reimburses a [lobbyist], shall report on the financial statement the name of each person or entity for which the services were rendered and the category of the amount of each fee.

This section requires a legislator to report fees received by the legislator himself or herself for services rendered by the legislator, not fees received by the legislator's spouse for services rendered by the spouse. *Contrast* Gov't Code § 572.023 (filer must report his or her own financial activity as well as the financial activity of the filer's spouse if filer had actual control over that activity).

SUMMARY

The prohibitions in section 36.08(f) of the Penal Code do not apply to a benefit accepted by a legislator's spouse. The issue of who accepts a benefit is a fact question.

The prohibition on certain gifts in section 305.024(a)(2) of the Government Code does not apply to fees for actual services rendered.

Section 572.024 of the Government Code does not require a legislator to report fees received by the legislator's spouse for services rendered by the legislator's spouse.

¹ The lobby law requires a lobbyist to disclose certain types of expenditures made to communicate directly with a member of the legislature to influence legislation. Gov't Code §§ 305.006, 305.0061, 305.0062. The reporting requirement extends to expenditures made for the benefit of the legislator's immediate family members if the purpose of the expenditure is to facilitate communication with the legislator. *See id.* §§ 305.0061(b), 305.0062(a)(6). The question raised here, however, has to do with the prohibition in section 305.024(a)(2), not with the reporting requirements under the lobby law.

² The prohibition in section 305.024(a)(2) applies to a gift to a member of the legislature, not a gift to a member's spouse. Again, whether a gift is made to a legislator or to the legislator's spouse is a fact question. *Cf. id.* § 305.0061(b) (specifically imposing detailed reporting requirement in regard to certain expenditures for a legislator as well as to a legislator's immediate family). A lobbyist does not avoid the prohibition simply by having a legislator's spouse deliver a gift to the legislator.