



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 254

February 24, 1995

Whether a legislator may use political contributions to supplement the salaries of state employees under the legislator's supervision. (SP-3)

In this opinion the Texas Ethics Commission addresses the permissibility of a legislator's use of political contributions to supplement the salaries of state employees under his or her supervision. This opinion considers the permissibility of two different methods of doing so: by giving political contributions to the state to be used to offset part of the state's cost of paying salaries to certain employees and by paying political contributions directly to the state employees.

Under the campaign finance law, title 15 of the Election Code, a candidate or officeholder may not convert political contributions to personal use. Elec. Code § 253.035. The use of political contributions to supplement the salaries of state employees is not a conversion to personal use since "personal use" does not include payments for purposes connected with the performance of duties or activities as a holder of public office. *Id.* § 253.035(d). Therefore it is permissible under title 15 for a legislator to use political contributions to supplement employee's salaries, either by making contributions to the state to be used to offset part of the cost of the state's payment of certain employees' salaries¹ or by paying the supplements directly to the employees.

Legislative employees are also subject to section 36.08(f) of the Penal Code, which provides as follows:

A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

Payments of money are benefits. Penal Code § 36.01(3). Thus in order for a person subject to section 36.08(f) to accept any payment, there must be an exception to section 36.08(f) that permits the payment.

Among the list of exceptions to the prohibitions is an exception for "a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship *independent of the official status of the recipient*." *Id.* § 36.10(a)(2) (emphasis added).² A state employee's business relationship with his or her employer obviously does not exist "independent of the official status of the recipient." Nonetheless we concluded in a 1993 opinion that "gifts that pass downward in the chain of command and that are given on account of a working relationship may be permissible under the independent relationship exception." [Ethics Advisory Opinion No. 139](#) (1993). That opinion considered whether the chair of a legislative committee could buy gifts for legislative staff members. Penal Code § 36.01(3). In regard to the application of the "independent relationship" exception, we wrote:

Although this exception applies to many working relationships, by its terms it applies only to a gift given because of a relationship that is "independent of the official status of the recipient." Strictly speaking, a working relationship that develops among legislators and legislative staff members cannot be said to exist "independent of the official status" of the legislators and legislative staff members. Nonetheless, we do not think the legislature intended to prohibit gifts in contexts that

make clear that a gift is given in recognition of a working relationship and not with the intent that the gift promote or discourage a certain resolution of matters that may come before the legislature.

The purpose of the prohibitions on gifts is, we think, to prevent even the appearance that government decisions are influenced by personal gifts to government officers and employees.³ See [Ethics Advisory Opinion No. 130](#) (1993). Gifts that pass from the more powerful to the less powerful--for example, from legislator to legislative staff member--generally do not raise even the appearance that government action is being bought and sold. See [Ethics Advisory Opinion No. 118](#) (1993). Therefore, we conclude that gifts that pass downward in the chain of command and that are given on account of a working relationship may be permissible under the independent relationship exception.

[Ethics Advisory Opinion No. 139](#) (1993). We think that discussion is applicable to the question raised here. We conclude, therefore, that a salary supplement paid by a legislator to state employees who work for the legislator is permissible under the "independent relationship" exception.

SUMMARY

Nothing in title 15 of the Election Code prohibits the use of political contributions to supplement the salaries of state employees. A salary supplement paid by a legislator to state employees who work for the officeholder is permissible under section 36.10(a)(2) of the Penal Code.

¹ The Ethics Commission cannot opine on whether there are other statutory provisions regarding the payment of state salaries that would disallow this indirect method of supplementing state employees' salaries. The Comptroller should be able to provide that information.

² A salary supplement is a benefit.

³ Footnote omitted noting the prohibitions on gifts in chapter 36 of the Penal Code apply regardless of whether a gift is given with the intent to influence.