



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 261

May 12, 1995

Whether county officials would violate Penal Code section 36.08 by accepting food, transportation, and lodging in connection with a demonstration of computer equipment by a computer equipment vendor. (AOR 291)

The Texas Ethics Commission has been asked whether county officials may accept meals, transportation, and lodging from a vendor of computer equipment. The items would be furnished in connection with an out-of-county trip to the vendor's company to view a demonstration of the equipment that the county may consider purchasing.

Section 36.08(d) of the Texas Penal Code generally prohibits a public servant "who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government" from accepting a benefit from a person the public servant knows is interested in such a transaction. The prohibition does not apply, however, to food, lodging, transportation, or entertainment accepted as a guest and reported by the donee in accordance with any applicable law. Penal Code § 36.10(b).

In previous advisory opinions, the commission has determined that in order for a public servant to accept food, lodging, transportation, or entertainment "as a guest," the donor of the items must be present. [Ethics Advisory Opinions Nos. 118](#) (1993), [64](#), [54](#), [12](#) (1992). In the situation at hand, representatives of the computer company would be present at the officials' destination and would be present for the demonstration of the computer equipment. The requestor states, however, that the vendor's representatives would not necessarily be present at the hotel where the officials would stay nor during the transportation to and from the demonstration site. The requestor asks whether it is permissible to accept transportation and lodging under these circumstances.

A representative of the computer company must be present for acceptance of meals by the county officials to be permissible under the guest exception.¹ [Ethics Advisory Opinions Nos. 64](#), [54](#), [12](#) (1992). Although the "presence" requirement is generally applicable to transportation and lodging, the donor's presence is not necessary when transportation and lodging are provided in the context of a larger event at which the donor is present. In this case the donor's presence at the demonstration satisfies the presence requirement in connection with transportation and lodging necessary for the officials' attendance at the demonstration.

SUMMARY

County officials may accept transportation and lodging necessary for attendance at a vendor's demonstration of equipment even though the vendor's representatives are not in the vehicles or hotels, if the vendor's representatives are present at the demonstration. For acceptance of meals to be permissible, the donor's representatives must be present at the meals.

¹ In this situation the county could presumably pay meal costs since the trip in question involves county business.