



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 268

*June 16, 1995*

*Whether an officeholder subject to section 36.08(f) of the Penal Code may accept a waiver of membership fees in a private organization. (AOR-299)*

The Texas Ethics Commission has been asked to consider whether an officeholder subject to section 36.08(f) of the Penal Code<sup>1</sup> may accept an honorary membership that involves a waiver of membership fees in a private organization. One of the organizations described in the request letter provides dining facilities only; the other organizations are country clubs that provide recreational facilities as well as dining facilities. This opinion will address three separate issues: whether the officeholder may accept the waiver as a personal gift; whether the officeholder may accept the waiver as an officeholder contribution; and whether the officeholder may accept the gift on behalf of the state.

### **Personal Gift**

Members of the legislature, the governor, and the lieutenant governor are subject to a prohibition on the acceptance of "benefits."<sup>2</sup> Penal Code § 36.08(f). A "benefit" is "anything reasonably regarded as pecuniary gain or pecuniary advantage." *Id.* § 36.01(3). Each of the honorary memberships at issue here involves the waiver of several thousand dollars in fees. Such waivers are "benefits" for purposes of section 36.08(f) of the Penal Code.

There are a number of exceptions to the prohibition on the acceptance of benefits in section 36.08(f). *See id.* § 36.10 (listing exceptions). Based on the information provided in the request letter, however, there is no exception applicable that would allow the officeholder to accept the fee waivers in question as personal gifts.<sup>3</sup> It is possible, though, that the exception allowing acceptance of a benefit as a political contribution is applicable here. *See id.* § 36.10(a)(4) (allowing acceptance of benefit in the form of a political contribution).

### **Political Contribution**

Members of the legislature, the governor, and the lieutenant governor may accept political contributions in accordance with title 15 of the Election Code. Elec. Code chs. 251-257. There are two types of political contributions: campaign contributions and officeholder contributions. Elec. Code § 251.001(5). A campaign contribution to a candidate<sup>4</sup> is a contribution offered or given with the intent that it be used in connection with a campaign for an elective office. *Id.* § 251.001(3). An officeholder contribution is a contribution to an officeholder or political committee offered or given with the intent that it be used to defray expenses incurred by the officeholder in performing a duty or engaging in an activity in connection with the office as long as those expenses are not reimbursable with public money. *Id.* § 251.001(4).

It is possible that the opportunity to use the facilities of a private club<sup>5</sup> could be offered with the intent that the facilities be used either in connection with a campaign or in connection with the duties or activities of an office. As a general rule, a candidate or officeholder could accept the offer to use facilities for those purposes. Such a contribution is not permissible, however, if the club is incorporated. *Id.* § 253.094.

If a candidate or officeholder accepted the use of facilities of an unincorporated private club as a campaign contribution or an officeholder contribution, the candidate or officeholder could not use the facilities for personal

purposes unrelated to his or her candidacy or to duties or activities of his or her office.

## Gift To The State

The laws subject to the jurisdiction of the Ethics Commission do not regulate the acceptance of gifts on behalf of the state. [Ethics Advisory Opinion No. 62](#) (1992). The permissibility of accepting a gift on behalf of the state is governed by the laws applicable to a specific agency or office. If a state agency or office did accept the opportunity to use the facilities of a private club for state business, it would be a misuse of government resources for such opportunities to be used for personal or campaign purposes. Penal Code § 39.02(a)(2).

### SUMMARY

Waiver of a membership fee to a private club is a "benefit" for purposes of chapter 36 of the Penal Code.

As a general rule, a candidate or officeholder could accept an offer to use the facilities of a private club for campaign or officeholder purposes. Such a contribution would not be permissible, however, if the club were incorporated. If a candidate or officeholder accepted the opportunity to use the facilities of a private club as a campaign contribution or an officeholder contribution, the candidate or officeholder could not use the facilities for personal purposes unrelated to his or her candidacy or to his or her duties or activities of office.

If a state agency or office accepted the opportunity to use the facilities of a private club for state business, it would be a misuse of government resources for such opportunities accepted on behalf of the state to be used for personal or campaign purposes.

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<sup>1</sup> Under section 36.08(f) of the Penal Code members of the legislature, the governor, and the lieutenant governor are subject to a general restriction on the acceptance of benefits from any person.

<sup>2</sup> Such officeholders are also subject to restrictions on the acceptance of gifts from a person required to register as a lobbyist. Gov't Code § 305.024. This opinion is based on the assumption that the organizations in question are not required to register as lobbyists.

<sup>3</sup> There is an exception applicable to food and entertainment accepted as a "guest" and reported in accordance with any applicable reporting requirement. Penal Code § 36.10(b). For an officeholder to accept something as a "guest," the donor must be present. [Ethics Advisory Opinion No. 12](#) (1992). Although the "guest" exception may permit an officeholder to use the facilities of a private organization as another person's guest, the "guest" exception does not allow an officeholder to accept a fee waiver that entitles the officeholder to all the privileges of membership.

<sup>4</sup> A person who has a campaign treasurer appointment on file with the appropriate filing authority may accept campaign contributions. *See* Elec. Code § 253.031(a).

<sup>5</sup> We frame the question here in terms of use of the facilities rather than in terms of membership because it is possible that some privileges of membership would not serve any campaign or officeholder purposes.