



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 282

*October 13, 1995*

*Whether chapter 36 of the Penal Code prohibits city employees from accepting discounts from child care providers under a group discount program offered to personnel of large employers. (AOR-316)*

The Texas Ethics Commission has been asked whether city employees may accept discounts from child care providers under a group discount program offered to the personnel of large employers. The requestor explains that a number of child care providers offer group discount programs to the personnel of large employers. These programs typically offer discounts of 10 to 20 percent. The actual purchase of child care services is between the employee and the child care provider; the employer is not involved in the contract. The requestor also informs us that the city typically regulates child care providers in some way. For example, the city requires providers with kitchens to obtain food service permits. Given the regulatory relationship with the providers, the requestor asks whether chapter 36 of the Penal Code prohibits city employees from accepting child care discounts.

Penal Code section 36.08 generally prohibits a public servant in an agency performing regulatory functions from accepting a benefit from a person subject to regulation by the agency. Penal Code section 36.08(a). If an agency performs regulatory functions, all agency employees are subject to the prohibition. [Ethics Advisory Opinion No. 61](#) (1992). A discount on child care costs is a benefit. Nevertheless we believe the acceptance of a child care discount under the circumstances described in the request letter is excepted from the benefits prohibition under Penal Code section 36.10(a)(2), which permits the acceptance of

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.

The discounts at issue would be given on account of a business relationship between the employees and the child care providers. In a narrow sense, the relationship is not independent of the official status of the recipients, because the employees would be entitled to the discount on the basis of their employment with the city. We nonetheless conclude that the independent relationship exception applies because the offer depends on the size, not the official status, of their employer. In [Ethics Advisory Opinion No. 139](#) (1993), we noted that the purpose of section 36.08 is to prevent even the appearance that government decisions are influenced by personal gifts to government officers and employees. In that opinion, we determined that gifts from legislators to their staffs on account of a working relationship did not raise the appearance of impropriety. A discount offered to government employees on the same terms as offered to employees of other large employers does not raise the appearance of impropriety either. Our decision would be different if the discounts were offered to the city employees on more favorable terms than those offered to employees of large employers in the private sector.

### SUMMARY

City employees may accept discounts from child care providers under a group discount program offered to personnel of large employers in the private as well as the public sector.