



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 294

December 15, 1995

Whether an officer or employee of a state agency is prohibited by chapter 36 of the Penal Code from receiving consideration for teaching a course at a state university. (AOR-329)

The Texas Ethics Commission has been asked whether a board member, commissioner, executive director, or key supervisory employee of the Texas Workforce Commission, Department of Insurance, State Board of Education, Texas Education Agency, or Texas Bond Review Board may accept payment for teaching a course at a state university. The hypothetical posed assumes that the college has requested the individual to teach due to his or her expertise and experience in the subject matter of the course, and not because of the individual's official status. The requestor asks whether acceptance of payment for teaching the course would violate either section 36.07 or section 36.08 of the Penal Code.

Under the honorarium provision, Penal Code section 36.07, a public servant may not solicit, accept, or agree to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties. The commission has previously stated that in some cases acceptance of payment for teaching could be a violation of the honorarium provision. [Ethics Advisory Opinion No. 148](#) (1993). The crucial factor is whether the individual would not have been asked to provide the services but for his or her official status. Because the hypothetical stipulates that the individual would be asked to teach because of his or her expertise, and not because of the individual's official status, the honorarium provision would not prohibit the payment. [Ethics Advisory Opinions Nos. 273](#) (1995); [173](#) (1993).

The requestor also asks whether the payment would be a violation of Penal Code section 36.08, which prohibits a public servant from accepting a benefit from a person subject to his agency's jurisdiction. We cannot determine from the situation described whether the college paying the state officer or employee would be subject to the jurisdiction of the public servant's agency. Assuming that this were the case, however, section 36.10(a)(1) of the Penal Code may except the payment from the prohibition. This exception applies to a "benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant." A public servant gives "legitimate consideration" for a payment if the payment reflects the actual value of the services provided. [Ethics Advisory Opinion No. 41](#), n.1 (1992).

The requestor also asks whether any other laws would prohibit the payment described, assuming that no resources from the individual's agency were used and the individual kept accurate time records for his agency work, where applicable. The Ethics Commission is authorized to interpret only the laws specified in chapter 571 of the Government Code. Most of those laws do not address outside employment of state officers and employees. If the individual accepted employment by a college in return for a promise or act of official discretion, the bribery law would be violated. *See* Penal Code § 36.02; [Ethics Advisory Opinion No. 192](#) (1994). Furthermore, all state officers and employees are directed to conduct their business and professional activities in such a way that the activities could not reasonably be expected to induce them to reveal confidential information gained from their official jobs or impair their judgment in performing their official duties. Gov't Code § 572.051(2), (3). The general counsel for the agency or the Office of the Attorney General would be the proper authority to consult for information about other laws or agency policies restricting outside employment by agency officers and employees.

SUMMARY

The honorarium provision does not prohibit a state officer or employee from accepting payment for teaching a course if the individual was asked to teach because of his expertise and not because of his official status. A state officer or employee may accept payment from a person subject to his agency's regulation or inspection if he has given legitimate consideration for the payment in a capacity other than his official position.