



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 305

March 22, 1996

Whether a professor at a state university may accept a fee in addition to the professor's regular salary for performing a service outside of the professor's regular job duties. (AOR-339)

The Texas Ethics Commission has been asked to consider whether a professor at a state university may accept a fee in addition to the professor's regular salary for performing a service outside of the professor's regular job duties.

The Texas Penal Code contains a provision prohibiting public servants, including state employees, from accepting honoraria in certain circumstances. Penal Code § 36.07. The specific language of the provision is as follows:

(a) A public servant commits an offense if the public servant solicits, accepts, or agrees 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.*

(b) This section does not prohibit a public servant from accepting transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event.

(c) An offense under this section is a Class A misdemeanor. (Emphasis added.)

Thus, an honorarium¹ is permissible as long as the public servant's official status was not a deciding factor in the decision to request the public servant to perform the services at issue. Presumably university employees are often asked to perform services because of their academic expertise and not because they hold a position at a particular institution.² In such cases, the honorarium provision would not prohibit them from accepting payment for performing the services.³

SUMMARY

A public servant may accept an honorarium for performing services if the public servant's official status was not a deciding factor in the decision to request the public servant to perform those services.

¹ Previous opinions have determined that payments for speaking and teaching are included in the term "honorarium." [Ethics Advisory Opinions Nos. 173, 148, 125](#) (1993), [17](#) (1992). The Ethics Commission has not determined what other types of payments are within the scope of the term "honorarium." For purposes of this opinion, we assume that the payments at issue here are honoraria.

² The permissibility of an honorarium depends on the motivation of the person seeking the services of a public servant since a public servant may not accept an honorarium for services the public servant would not have been asked to provide but for his or her official position or duties. Although it may be impossible to know the various motivations of a person seeking the services of a public servant, a

useful way for a public servant to analyze whether acceptance of a honorarium is permissible is to ask: "Would my services be as useful or desirable if I did not hold a position with the government?"

³ An employee of a state university could not, of course, use university resources to perform services for nonuniversity purposes.