



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 312

*March 22, 1996*

*Whether an employee of a city police department in Texas may accept a fee for performing services as an expert fingerprint examiner in a criminal case in Louisiana. (AOR-346)*

The Texas Ethics Commission has been asked to consider whether an employee of a city police department in Texas may accept a fee for performing services as an expert fingerprint examiner in a criminal case in Louisiana.

The Texas Penal Code contains a provision prohibiting public servants, including city 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 honorarium<sup>1</sup> 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. We assume that a fingerprint expert is generally asked to perform services because of his expertise and not because he is employed by a particular city. *See generally Ethics Advisory Opinion No. 305* (1996). If that is the case, the honorarium provision would not prohibit a fingerprint expert who is a city employee from performing services for a defense attorney in another state. Before accepting outside employment a city employee should, however, determine whether the city has placed restrictions on outside employment.

### SUMMARY

Under section 36.07 of the Penal Code a public servant may accept an honorarium for performing services as long as the public servant's official status was not a deciding factor in the decision to request the public servant to perform those services.

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<sup>1</sup> 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 without deciding that the payments at issue here are honoraria.