



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 325

May 10, 1996

*Whether a lobby registrant may purchase real estate from a legislator if the lobby registrant pays fair market value for the property.
(AOR 362)*

The Texas Ethics Commission has been asked whether a lobby registrant may purchase real estate from a legislator if the lobby registrant pays fair market value for the property. The request letter also asks how to determine fair market value for such a transaction. The legislator owns a small subdivision originally comprising ten lots of equal price, two of which he has already sold. A lobby registrant wishes to purchase one of the eight remaining lots, with financing provided by a third-party mortgage company.

Because the proposed buyer is a registered lobbyist, we will first address whether the lobby law would prohibit the transaction. A lobby registrant may not give a gift of cash or a negotiable instrument to a member of the legislative or executive branch. Gov't Code § 305.024(a)(2). A payment to a legislator for a piece of real property would not be a gift to the legislator if the payment reflected the fair market value of the property.

Members of the legislature are also subject to a general prohibition against the acceptance of benefits from any person. Penal Code § 36.08(f). There is an exception for a benefit for which the public servant "gives legitimate consideration in a capacity other than as a public servant." *Id.* § 36.10(a)(1). The Ethics Commission has interpreted this exception to mean that the benefit received by the public servant must reflect the actual value of the consideration the public servant provides. [Ethics Advisory Opinions Nos. 117 n.2 \(1993\)](#), [41 \(1992\)](#). This assures that a business transaction is not used to avoid the prohibition on the acceptance of benefits. Thus, a state officer may receive payment for a piece of real estate without violating Penal Code section 36.08(f) as long as the payment reflects the fair market value of the land.

The requestor asks how to determine the fair market value of the property. The statutes the Ethics Commission is authorized to interpret do not provide a basis for determining fair market value. In the context of determining the appropriate amount of reimbursement due for political use of a personal asset, the commission has said that any reasonable method for determining value is acceptable. [Ethics Advisory Opinion No. 116 n.4 \(1993\)](#); *see also* [Ethics Advisory Opinions No. 90, 4 n.1 \(1992\)](#) (determining value of a place to hunt and value of a pass to a recreational facility).

SUMMARY

A legislator may sell a piece of real property to a registered lobbyist provided that the purchase price reflects the fair market value of the property.