



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 368

May 9, 1997

*Whether a judge may accept an offer from the sponsor of a legal seminar to allow the judge to attend the seminar at no cost. (AOR-405)*

A judge has asked whether he may accept an offer from the sponsor of a legal seminar to allow the judge to attend the seminar at no cost. The questions raised are whether acceptance of such an offer is permissible under the Judicial Campaign Fairness Act and also under section 36.08 of the Penal Code.

In 1995 the Texas Legislature adopted the Judicial Campaign Fairness Act as part of the Texas campaign finance law. S.B. 94, Acts 1995, 74th Leg., ch. 763. The Judicial Campaign Fairness Act limits the time period during which a judge may accept campaign or officeholder contributions.<sup>1</sup> Elec. Code § 253.153. The question here is whether providing a judge the opportunity to attend a legal seminar at no cost would be an officeholder contribution and therefore impermissible outside of the period during which a judge may accept officeholder contributions.

An "officeholder contribution" is a contribution to an officeholder that is offered or given with the intent that it be used to defray expenses that are (1) incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and (2) not reimbursable with public money. *Id.* § 251.001(4). We assume that in many cases a judge attends a legal seminar because the seminar is related to the performance of his or her judicial duties. *See generally* [Ethics Advisory Opinion Nos. 279, 247](#) (1995). In such a case, attendance at the legal seminar is an activity in connection with the judge's office. Providing a judge the opportunity to attend a legal seminar at no cost is not an officeholder contribution to the judge, however, if the expenses defrayed would otherwise be "reimbursable with public money."

The judge requesting this opinion states that if he paid a fee to attend the seminar in question, the fee would be reimbursable with county funds. Because the cost of attending the seminar would be reimbursable with public funds, the seminar sponsor's waiver of the fee is not an officeholder contribution to the judge.

The judge also asks whether acceptance of the seminar sponsor's offer is permissible under section 36.08 of the Penal Code, which prohibits public servants from accepting benefits in various circumstances. Because the judge would be entitled to reimbursement from the county for the cost of attending the seminar, we do not think the waiver of fee is a benefit to the judge.<sup>2</sup> Therefore, the waiver is not prohibited under section 36.08 of the Penal Code.

### SUMMARY

A waiver of a seminar fee is not an officeholder contribution for purposes of title 15 of the Election Code nor is it a benefit for purposes of section 36.08 of the Penal Code if the fee would otherwise be reimbursable from county funds.

<sup>1</sup> The Judicial Campaign Fairness Act applies to justices of the supreme court, judges of the court of criminal appeals, justices of courts of appeals, district judges, statutory county court judges, and statutory probate court judges as well as to candidates for those positions. *See*

Elec. Code § 253.151.

<sup>2</sup> The judge asks whether the "guest " exception in Penal Code section 36.10(b) would be applicable here. Section 36.10 sets out various exceptions to the prohibitions on benefits in section 36.08. Section 36.10(b) allows a public servant to accept food, lodging, transportation, or entertainment "as a guest " if the public servant complies with any applicable reporting requirement. That exception applies only to the acceptance of benefits in the form of food, lodging, transportation, or entertainment, however, and would not apply to the acceptance of a benefit in the form of a fee waiver.