



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 396

February 13, 1998

Whether a county or district clerk may accept contributions from a corporation to defray costs of a campaign for an officer position in a professional organization or may accept other gifts. (AOR-434)

The Texas Ethics Commission has been asked about the permissibility of certain contributions and gifts to county and district clerks. The first question is whether a county or district clerk may accept a contribution from a corporation to support the clerk's campaign for election to an office of an association of county and district clerks. A corporation is prohibited from making an "officeholder contribution" to an individual who holds an elective public office. Elec. Code §§ 253.094 (prohibiting corporate political contributions), 251.001(5) (political contributions include 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: (A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and (B) are not reimbursable with public money." *Id.* § 251.001(4). Campaigning for election to an office of an association of county and district clerks is clearly an activity in connection with the office of county or district clerk. Therefore, a contribution from a corporation to a county or district clerk that is intended to defray the costs of running for such a position is a prohibited "officeholder contribution" unless the costs are reimbursable with public money. *See generally* Attorney General Letter Opinion No. 97-077 (1997) (regarding use of county funds to mail materials relating to a county clerk's campaign for office in an association of county and district clerks).

The request letter also raises questions about the restrictions on gifts to public servants in Penal Code chapter 36. The request letter asks specifically about gifts to county and district clerks such as recreational trips and door prizes. As a public servant, a county or district clerk is subject to various Penal Code restrictions on the acceptance of "benefits." Penal Code § 36.08; *see id.* § 1.07(a)(41) (defining "public servant"). A "benefit" is "anything reasonably regarded as pecuniary gain or pecuniary advantage." *Id.* § 36.01(3). A recreational trip would be a benefit; whether a door prize is a benefit would depend on the nature of the door prize. *See generally* [Ethics Advisory Opinion Nos. 75, 63, 61, 36](#) (1992).

Whether a county or district clerk may accept a particular benefit depends on whether one of the restrictions in Penal Code section 36.08 is applicable.¹ For example, gifts to a county or district clerk from a vendor may be prohibited under Penal Code section 36.08(d), which provides as follows:

A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or is likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

It has been suggested that this prohibition is not applicable to a county or district clerk because the county commissioners court, not the county or district clerk, makes the final decisions in purchasing matters. We disagree. Even if a county or district clerk does not make final decisions about purchasing matters, a county or district clerk presumably exercises discretion in connection with purchases for the clerk's office by making recommendations to the commissioners court. In that case, the restriction in Penal Code section 36.08(d) would

apply to the provision of a benefit to a county or district clerk by a vendor who is interested in or is likely to become interested in selling goods or services to a county for the office of the county or district clerk.

In short, whether a county or district clerk may accept a particular gift depends on the nature of the gift and the status of the donor. Therefore, county and district clerks, like all public servants, should be familiar with the restrictions in Penal Code section 36.08.

SUMMARY

A contribution from a corporation to a county or district clerk that is intended to defray the clerk's costs of running for an elective position with an association of county or district clerks is a prohibited "officeholder contribution" unless the costs are reimbursable with public money.

For purposes of Penal Code section 36.08(d), a county or district clerk exercises discretion in regard to purchasing matters by making recommendations to the commissioners court even if the commissioners court makes the final decisions about purchasing matters.

¹ Penal Code section 36.10 sets out exceptions to the application of the restrictions in section 36.08. For example, a political contribution (including an officeholder contribution) is excepted from the restrictions in Penal Code section 36.08. Penal Code § 36.10(a)(4). In other words, the Penal Code does not prohibit political contributions that are permissible under the Election Code.