



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 401

August 14, 1998

Whether Government Code section 572.023(b)(11) requires an officeholder to report expenses paid in connection with a trip to make a speech to assist a candidate. (AOR-439)

The Ethics Commission has been asked about Government Code section 572.023(b)(11), which requires that a state officer report on his or her personal financial statement certain information about the provision of transportation, meals, and lodging to the state officer. The specific question is whether a state officer is required to report expenses paid or provided in connection with the state officer's appearance at a fundraiser to give a speech in support of a candidate for a state or federal office.

State officers are required to file an annual personal financial statement with the Ethics Commission. Gov't Code § 572.021. Under Part 11 of the current Ethics Commission Personal Financial Statement Form, a state officer must report the "identification of any person providing transportation, meals, or lodging expenses permitted under Section 36.07(b), Penal Code, and the amount of those expenses," *id.* § 572.023(b)(11). Thus, in order to complete Part 11, a state officer must understand what type of expenses are "permitted" under Penal Code section 36.07(b).

Penal Code section 36.07 provides 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.

In short, subsection (a) prohibits a public servant from accepting an honorarium for providing services in certain circumstances, and subsection (b) qualifies that prohibition by stating that the prohibition does not extend to the acceptance of food, transportation, and lodging in certain circumstances. On a personal financial statement a state officer is required to report the provision of transportation, meals, and lodging "permitted" under subsection (b) of Penal Code section 36.07. We interpret that to mean that a state officer must report transportation, meals, and lodging provided in circumstances in which section 36.07(a) would prohibit the state officer from accepting a fee.¹

A state officer may not accept a fee for a speaking engagement if the state officer would not have been asked to speak but for his or her official position or duties. The prohibition extends to a fee for a campaign speech if the state officer would not have been asked to give the speech but for his or her official position or duties. Nonetheless we conclude that a state officer is not required to report the provision of transportation, meals, and lodging in connection with a campaign speech on Part 11 of the state officer's personal financial statement if the

candidate on whose behalf the state officer makes the campaign speech is required to report the expenditures on a campaign finance report.² We reach this conclusion because, in our view, the purpose of the reporting requirement set out in Government Code section 572.023(b)(11) is to assure public disclosure of information that would otherwise go unreported, not to require public disclosure of information required to be disclosed under the applicable campaign finance law.³ *See generally id.* § 572.023(b)(7) (disclosure of gifts on personal financial statement is not required if gift is reported by lobbyist or on campaign finance report).

SUMMARY

A state officer is not required to report the provision of transportation, meals, and lodging in connection with a campaign speech for someone else under Government Code section 572.023(b)(11) if the candidate on whose behalf the state officer makes the campaign speech is required to report the expenditures on a campaign finance report.

¹ In previous opinions, we have determined that a fee paid to a speaker is an "honorarium" for purposes of Penal Code section 36.07. [Ethics Advisory Opinion No. 17](#) (1992); *see also* [Ethics Advisory Opinion No. 312](#), at 2 n.1 (1996). *See generally* Random House Unabridged Dictionary 918 (2d ed. 1993) (defining "honorarium" as "a payment in recognition of acts or professional services for which custom or propriety forbids a price to be set").

² Under the Texas campaign finance law a candidate would be making a reportable campaign expenditure by paying for another individual's transportation, meals, and lodging in order for the other individual to make a campaign speech. A person who paid his or her own transportation, meals, and lodging in order to make a campaign speech for a candidate would be making an unreportable contribution to the candidate, as long as the person making the speech received no compensation or reimbursement. Elec. Code §§ 254.032 (contribution of personal travel expenses), 254.033 (contribution of personal services). An individual who paid his or her expenses merely to attend a candidate's campaign event would not be making a contribution to the candidate.

³ Section 572.023(b)(11) itself provides that a state officer is not required to report information under Part 11 that is required to be reported under the lobby law. By rule, this commission has provided that a state officer is not required to report information under Part 11 that the state officer has reported on a campaign finance report. 1 T.A.C. § 40.3.