



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 416

July 9, 1999

The Texas Ethics Commission has been asked whether a legislative employee may accept a grant to conduct research in conjunction with the legislative employee's enrollment, on personal time, in a graduate studies program. (AOR-459)

The Texas Ethics Commission has been asked to consider whether a legislative staff member may accept payment for research performed in connection with graduate studies the staff member is pursuing on non-state time. The payments would come from a grant that a university professor has received. The professor would pay the legislative staff member for research related to the staff member's graduate studies. Several provisions under the jurisdiction of the Ethics Commission are relevant to this question. Gov't Code § 572.051 (standards of conduct); Penal Code §§ 36.07 (honorarium prohibition), 36.08 (gift prohibitions), 36.10 (exceptions to gift prohibitions).¹

A legislative staff member is subject to restrictions on the acceptance of "benefits." Penal Code § 36.08(f). Although a payment for services rendered is a "benefit," a legislative employee may accept such a payment as long as the services are performed in a capacity other than as a legislative employee and as long as the payment reflects the actual value of the services performed. *Id.* § 36.10(a)(1); [Ethics Advisory Opinion No. 41](#) (1992). The requirement that a public servant act "in a capacity other than as a public servant" means that it must be the services rendered and not the status of the public servant rendering the services that is of value to the person for whom the services are performed. [Ethics Advisory Opinion No. 358](#) (1997).

Under the honorarium law a legislative employee may not accept an honorarium for services that he would not have been asked to provide but for his official position. Penal Code § 36.07. In other words, as long as the legislative employee's state job was not a reason he was asked to perform the research in question, payment for the research would not be prohibited under the honorarium law.²

Section 572.051 of the Government Code sets out standards of conduct for state employees. Gov't Code § 572.051. Those standards of conduct provide that a state employee should not accept other employment or compensation that might induce the employee to disclose confidential information or that could reasonably be expected to impair the employee's independence of judgment in the performance of his official duties. *Id.* § 572.051(2), (3). A state employee should consult with his supervisor to determine whether outside work is in keeping with those standards. *See* General Appropriations Act, 75th Leg., R.S., ch. 1452, art. IX, sec. 6, at IX-45, 1997 Tex. Gen. Laws (appropriated funds may not be used to pay salary of state employee who violates standards of conduct);³ *see also* [Ethics Advisory Opinion No. 156](#) (1993).

SUMMARY

The laws under the jurisdiction of the Ethics Commission do not contain a general prohibition on outside work by legislative employees. There are, however, provisions under the jurisdiction of the Ethics Commission that are relevant to questions about outside work by state employees. Gov't Code § 572.051 (standards of conduct); Penal Code §§ 36.07 (honorarium prohibition), 36.08 (gift prohibitions), 36.10 (exceptions to gift prohibitions).

In addition, constitutional provisions or legislative rules may be relevant to whether outside employment by a legislative employee is permissible.

¹ A legislative employee should ascertain whether any outside employment is permissible under the Texas Constitution as well as under any applicable legislative rules or policies. *See generally* Tex. Const. Art. XVI, § 40 (regarding service by state employees on boards of local governmental bodies). The Ethics Commission is not authorized to issue opinions regarding provisions in the Texas Constitution. The Office of the Attorney General may issue opinions regarding the Texas Constitution to authorized requestors. *See* Gov't Code § 402.042.

² A payment for services is not a prohibited honorarium simply because the public employee uses skills or knowledge he acquired as a public servant. [Ethics Advisory Opinion No. 192](#) (1994).

³ Effective September 1, 1999, the substance of this appropriations act rider will be codified as Government Code section 2113.014(a). Act of May 29, 1999, S.B. 177, § 4, sec. 2113.014(a), 76th Leg., R.S. (to be codified at Gov't Code § 2113.014(a)).