



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 421

November 12, 1999

Regarding the application of the ethics laws to gifts given to a child of a member of the legislature on an occasion such as a birthday, quinceañera, bar or bat mitzvah, or christening. (AOR-464)

The Texas Ethics Commission has been asked about the application of the laws subject to interpretation by the Ethics Commission to gifts given to a legislator's child on an occasion such as a birthday, quinceañera, bar or bat mitzvah, or christening. Both the Penal Code and the lobby law contain restrictions that are relevant to this question.

PENAL CODE RESTRICTIONS

The Penal Code contains a broad prohibition on the solicitation and acceptance of "benefits" by members of the legislature. Penal Code § 36.08(f). It also contains a number of exceptions to that prohibition. *Id.* § 36.10. The term "benefit" includes a gift given for the use or enjoyment of a legislator's child. *Id.* § 36.01(3) (defining "benefit" to include a thing of pecuniary value for a "person in whose welfare the beneficiary has a direct and substantial interest").¹ Thus, a member of the legislature may not solicit or accept a gift for his or her child unless one of the exceptions in section 36.10 applies to the gift.

In the case of a gift intended for the use or enjoyment of a child, it may not always be clear who is "accepting" the gift. *See generally* Property Code ch. 141 (Texas Uniform Transfers to Minors Act). In any event, the prohibition on a legislator's *solicitation* of a benefit for a child would apply if a legislator sent invitations to an event honoring the child in a situation in which the customary response to such invitations would be to provide a gift to the child. This does not mean that a legislator may not send invitations to such an event. There is an exception to the prohibition on the solicitation or acceptance of benefits for gifts conferred on account of kinship or a personal, professional, or business relationship independent of the legislator's official status. Penal Code § 36.10. Therefore, a cautious approach for a legislator who is sending invitations to an event honoring a child would be to send invitations only to persons with whom the legislator has a relationship independent of his or her status as a legislator.

LOBBY LAW RESTRICTIONS AND REPORTING REQUIREMENTS

The Texas lobby law, which is set out in chapter 305 of the Government Code, prohibits a legislator from accepting or soliciting certain gifts from lobbyists. Gov't Code § 305.024. Gifts from lobbyists must be permissible under both the lobby law and the Penal Code. In some cases, the lobby law restrictions prohibit gifts that would be permissible under the Penal Code. Although there are exceptions to the lobby law prohibitions, including an exception for gifts from certain relatives, there is no exception for gifts conferred on account of personal friendship or other relationships independent of the legislator's status. *Id.* § 305.025. Therefore, if a legislator invites personal friends who are lobbyists to an event honoring the legislator's child, the legislator should make sure those friends are aware of the lobby law restrictions.²

The lobby law also requires lobbyists to disclose expenditures made to communicate directly with legislators to influence legislation. Gov't Code § 305.006. The reporting requirement extends to expenditures made for the

benefit of a legislator's immediate family members if the purpose of the expenditure is to facilitate communication with the legislator. *Id.* Whether an expenditure for a gift is a lobby expenditure depends on the lobbyist's intent, and it would be a lobbyist's responsibility to determine whether to report a gift to a legislator's child as a lobby expenditure.

LEGISLATOR'S PERSONAL FINANCIAL STATEMENT

Every year a member of the legislature is required to file with the Ethics Commission a personal financial statement covering the previous calendar year. Gov't Code § 572.021. On that statement a legislator is required to report the identity of the donor and include a description of a gift to a dependent child if the gift is worth more than \$250. *Id.* § 572.023(b)(7). The reporting requirement does not apply to gifts required to be reported by a person required to be registered under the lobby law, or to gifts from individuals related to the officer within the second degree by consanguinity or affinity. *Id.* See also Gov't Code § 573.023 (determining degree of relationship).

SUMMARY

A member of the legislature may not solicit or accept a gift for his or her child unless one of the exceptions in section 36.10 of the Penal Code applies to the gift. A member of the legislature may not solicit or accept a gift for his or her child from a lobbyist unless the gift is permissible both under chapter 36 of the Penal Code and under the lobby law.

¹ Gifts, other than items of insignificant value, are "benefits." [Ethics Advisory Opinion Nos. 118](#) (1993), [61](#) (1992).

² The lobby law would prohibit the following gifts from personal friends who are lobbyists:

- a loan, including the guarantee or endorsement of a loan;
- a gift of cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code;
- transportation (other than incidental transportation) or lodging;
- expenditures for entertainment that in the aggregate exceed \$500 in a calendar year;
- an expenditure or series of expenditures for gifts that in the aggregate exceed \$500 in a calendar year;
- an expenditure for transportation, lodging, food, beverages, or entertainment unless the registrant is present at the event.