TEXAS ETHICS COMMISSION

ETHICS ADVISORY OPINION NO. 428

June 16, 2000

Whether a legislator is subject to any reporting requirements or restrictions in connection with gifts and invitations to the legislator's child. (AOR-471)

The Texas Ethics Commission has been asked to consider several questions about gifts and invitations to the child of a legislator. The request letter states that the requestor seeks a "reevaluation and clarification" of Ethics Advisory Opinion No. 421 (1999).

In Ethics Advisory Opinion No. 421, we considered a situation in which a member of the legislature invited lobby registrants to attend an event in honor of the legislator's child. We noted that the Penal Code 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. We also noted that the lobby law prohibition on a legislator's solicitation of gifts from a lobbyist would also apply in that situation. We advised, therefore, that a legislator should be sure that an invitation to a lobbyist would be permissible under an exception to the solicitation prohibition in the Penal Code and also under an exception to the solicitation prohibition in the lobby law.

The requestor describes the following fact situation:

> Let's presume that a legislator's son is an elementary school student. A birthday party is planned in their home . . . . Customarily, every classmate's parents invite the entire class to birthday parties. Although no gifts are solicited, they are routinely exchanged. In many areas, common gifts include Pokemon Stadium ($59.99), Barbie Shop with Me Cash Register ($49.99), Mario Party video game ($49.99), Star Wars Droid Development Kit ($99.99), LEGO Technic ($59.99) and other gifts that could clearly exceed the $50 minimum required to be reported by name by lobbyists. [Footnote omitted.]
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> The language in EAO-421 appears to imply that invitations to lobbyists' children may be considered solicitations for contributions from the child's lobbyist parent. It may be difficult to determine which children have a lobbyist as a parent. Frequently, children have different last names from their parents. Teachers at the child's school often do not know, and it would be inappropriate to discuss, whether parents of other children in the class are lobbyists.

Before addressing the specific question raised, we note that Ethics Advisory Opinion No. 421 considered a situation in which a legislator sent an invitation to a lobby registrant, not a situation in which a legislator or his child sent an invitation to a lobbyist's child. We think that distinction is significant. In our view, an invitation to a child to attend another child's birthday party can fairly be considered to be an invitation to, and therefore a solicitation of a gift from, the invited child, not the invited child's parent. In that case, the solicitation prohibitions in the lobby law and the Penal Code would not apply.[1]

The requestor's specific question[2] about the birthday party has to do with lobby law reporting requirements: "If the legislator did not know that a child in his son's class is the child of a lobbyist, would such a gift still constitute a reportable contribution?"

A lobbyist must report an expenditure only if the expenditure was made with the intent to communicate with a "member of the legislative or executive branch."[3] Gov't Code § 305.006(b). Therefore, even if the gift were attributable to the lobbyist for purposes of the lobby law, the lobbyist would be required to report the gift only if it was made to communicate with the child's father to influence legislative action.[4]

In regard to two other questions, the requestor sets out the following factual background:

> Let's presume that a legislator's daughter is a cheerleader for her public school. All cheerleaders are invited to attend a mandatory weekend retreat with the cheerleading squad at a hill country ranch owned by the head cheerleader's parents. Attendance at the retreat is required for continued participation as a cheerleader. Between practices and learning routines, the girls on the squad sleep in the ranch's guesthouse, swim in the pool, ride horses, and otherwise enjoy the ranch's amenities. The head cheerleader's parents provide the girls with all of their meals for the weekend.

The requestor's first question about those facts is as follows:

> Let's assume that the head cheerleader's mother is a lobbyist. As the value of the stay at the ranch clearly exceeds the minimum value of gifts required to be reported by name ($50), would the lobbyist be required to report the cheerleader's "use" of the ranch for the cheerleading event as a gift to her father as a legislator?

Again, a lobbyist must report an expenditure only if the lobbyist made the expenditure with the intent to communicate with a "member of the legislative or executive branch." Gov't Code §305.006(b). Therefore, the lobby registrant would be required to report the expenditures described above only if she made them to communicate with the child's father to influence legislative action.

The requestor's second question about those facts is as follows:

> Let's assume the head cheerleader's parents are not lobbyists. As the value of the stay may exceed the $250 reporting requirement, would the "use" of the ranch for the cheerleading event be considered a gift required to be reported on the legislator's personal financial disclosure statement?

Each year a member of the legislature must file a personal financial statement. Gov't Code §572.021. The personal financial statement must include an "identification of a person or other organization from which the individual or the individual's spouse or dependent children received a gift of anything of value in excess of $250 and a description of each gift." *Id.* § 572.023(b)(7). The question, then, is whether the hospitality provided to the legislator's daughter in the situation described would be a "gift" for purposes of section 572.023(b)(7). The term "gift" includes the provision of food and lodging in some circumstances. Ethics Advisory Opinion No. 29 (1992), n.5. In our opinion, however, the term "gift" does not include the provision of facilities for use for an event that is a required part of a school-sponsored activity.

The requestor's remaining question has to do with specific language in Ethics Advisory Opinion No. 421:

> Texas Government Code § 305 requires lobbyists to register and file timely reports. Ethics Advisory Opinion No. 421 states that "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." It would seem that it is the lobbyist's duty to know the applicable reporting laws. Does Ethics Advisory Opinion No. 421 place an affirmative duty upon legislators to remind lobbyists of the reporting requirements?

The quoted language comes from a discussion of the gift restrictions in the lobby law, not from a discussion of the reporting requirements. The specific context of that language is a discussion of the fact that the solicitation of gifts from personal friends may be impermissible if the friends are lobbyists. Therefore, we cautioned that a legislator sending an invitation to a lobbyist who is a personal friend should make sure that the friend understood what type of gifts would be permissible under the lobby law. If the legislator made clear that a lobbyist should

not send a gift that would be impermissible under the lobby law, the invitation could not be construed as an impermissible solicitation.

SUMMARY

The expenditure reporting requirements in the lobby law apply only to expenditures made to communicate with an officer or employee of the legislative or executive branch of state government to influence legislative or administrative action.

The expenditure restrictions in the lobby law apply regardless of whether an expenditure is made to communicate with an officer or employee of the legislative or executive branch of state government to influence legislative or administrative action.

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[1] Even taking the most cautious view of the situation and assuming that the invitation, and therefore the solicitation, was from the legislator to the lobbyist, there would be no violation of the Penal Code or the lobby law in the situation described. As to the Penal Code, the exception for gifts based on independent relationships would apply. Penal Code §36.10(a)(2). As to the lobby law, even an invitation sent out anticipating a gift worth as much as $100 would be permissible, as long as total gifts from the lobbyist to the legislator in that year did not exceed $500. Gov't Code § 305.024(a)(5) ($500 annual cap on gifts from lobbyist to legislator).

[2] The requestor also asks the following question about the birthday party: "Do relationships between the legislator and the children with whom his child attends class fall under the ⧫independent relationship' exception although a lobbyist does not?"

The "independent relationship exception" is a reference to an exception from the gift prohibitions in section 36.08 of the Penal Code. There is an exception to those restrictions for "a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient." Penal Code § 36.10(a)(2). A legislator may have an "independent relationship with a lobbyist," in which case the Penal Code restrictions would not apply to gifts from the lobbyist to the legislator. A gift from a lobbyist with whom a legislator has an "independent relationship" might nonetheless be prohibited under gift restrictions in the lobby law, which has no "independent relationship" exception. *See supra* note 1 regarding the applicability of the lobby law restrictions in the situation described in the request letter.

[3] The phrase "member of the executive or legislative branch" includes both officers and employees of the executive and legislative branches of state government. Gov't Code § 305.002(4), (7).

[4] In contrast, the restrictions on expenditures by lobby registrants in Government Code section 305.024 apply regardless of whether the lobbyist makes the expenditure with the intent to communicate to influence.