



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 474

November 27, 2006

Whether certain conduct constitutes legislative bribery and whether there is a duty to report such conduct. (AOR – 538)

The Texas Ethics Commission (commission) has been asked whether certain conduct constitutes legislative bribery under chapter 302 of the Government Code and whether there is a duty to report such conduct to the appropriate authority.

The requestor, a member of the Texas House of Representatives, provides the following:

Currently, persons who are required to register under Chapter 305, Government Code, are contacting Members and Members-elect of the Texas House of Representatives on behalf of a named Speaker candidate and asking Members to agree to vote for the candidate because the candidate will “put [the Member] on good committees,” “take care of [the Member,]” and “see to it that [the Member] has the right support in two years.”

Other comments made include statements that if the Member does not vote for the named Speaker candidate, “we won’t forget it,” and “we can make sure that you remember that you made a mistake.”

These calls and statements are also being made by former Members of the Texas House of Representatives to Members and Members-elect.

Chapter 302 of the Government Code regulates the election for the office of Speaker of the Texas House of Representatives and contains the legislative bribery prohibitions. Section 302.032 provides as follows:

A person commits an offense if, with the intent to influence a member of or candidate for the house of representatives in casting a vote for speaker of the house of representatives, the person:

(1) promises or agrees to cause:

(A) the appointment of a person to a chairmanship or vice-chairmanship of a house committee or subcommittee;

(B) the appointment of a person to a particular house committee or subcommittee, the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, the Legislative Audit Committee, or any other position the speaker appoints;

(C) preferential treatment on any legislation or appropriation;

- (D) the employment of a person; or
- (E) economic benefit to a person; or

(2) threatens to cause:

- (A) the failure to appoint a person to a chairmanship or vice-chairmanship of a house committee or subcommittee;
- (B) the failure to appoint a person to a particular house committee or subcommittee, the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, the Legislative Audit Committee, or any other position the speaker appoints;
- (C) unfavorable treatment on any legislation or appropriation;
- (D) the refusal of or removal from employment of a person; or
- (E) the withholding of economic benefit from a person.

Gov't Code § 302.032.

Section 302.033 provides as follows:

A member of or candidate for the house of representatives commits an offense if, on the representation or understanding that the member or candidate will cast a vote for a particular person for speaker of the house of representatives, the member or candidate solicits, accepts, or agrees to accept:

- (1) the appointment of or refusal to appoint a person to a chairmanship or vice-chairmanship of a house committee or subcommittee;
- (2) the appointment of or refusal to appoint a person to a particular house committee or subcommittee, the Legislative Budget Board, the Texas Legislative Council, the Legislative Library Board, the Legislative Audit Committee, or any other position the speaker appoints;
- (3) preferential or unfavorable treatment on any legislation or appropriation;
- (4) the employment of, refusal of employment of, or removal from employment of a person; or
- (5) economic benefit to or withholding of economic benefit from a person.

An offense of the legislative bribery provisions is a felony punishable by imprisonment for not less than two years nor more than five years. *Id.* § 302.034.

The law does not prohibit: (1) a person from contacting or communicating with a member of or candidate for the house of representatives about a legislative matter; or (2) a member of or candidate for the house of representatives from discussing, taking a position on, or advocating any action on a substantive issue in a speaker's race or any other legislative matter. *Id.* § 302.035.

In our opinion, the conduct described in the request letter is intended to influence a member in casting a vote for or against a speaker of the House of Representatives. The remaining issue is whether the conduct constitutes a promise or agreement to cause, or a threat to cause, the actions specifically listed in section 302.032 of the

Government Code. Depending on all the relevant facts, the conduct described in the request letter may constitute a promise or agreement to cause an appointment to a chairmanship or vice-chairmanship of a house committee or subcommittee, an appointment to a particular house committee or subcommittee, preferential treatment on any legislation or appropriation, employment of a person, or economic benefit to a person. Similarly, depending on all the relevant facts, the conduct described in the request letter may constitute a threat to cause a failure to an appointment to a chairmanship or vice-chairmanship of a house committee or subcommittee, a failure to an appointment to a particular house committee or subcommittee, unfavorable treatment on any legislation or appropriation, refusal of or removal from employment of a person, or withholding of economic benefit to a person. Furthermore, whether a person solicits, accepts, or agrees to accept any of the actions specifically listed in section 302.033 of the Government Code on the representation or understanding that the person will cast a vote for a particular speaker candidate depends on additional facts. Ultimately, whether particular conduct crosses the line in violation of the legislative bribery provisions in chapter 302 of the Government Code is for a trier of facts to decide after a consideration of all the relevant facts.¹

The legal value of an Ethics Advisory Opinion is to provide a defense to prosecution for activities that, in the opinion of the Ethics Commission, are not in violation of the laws under the jurisdiction of the Ethics Commission. Gov't Code § 571.097. It is never our role in opinions to resolve fact issues. 1 T.A.C. § 8.3(c). We do not believe that we have sufficient facts to provide that type of defense in this request. We recommend that individuals communicating to influence a member in casting a vote for a speaker of the House of Representatives and a member who is the recipient of such communications, exercise caution in these matters.

The requestor also asks whether there is a duty to report potentially illegal conduct to the proper authorities and whether physical evidence such as voice mail messages and electronic mail messages needs to be turned over to those authorities. Although the laws within the Texas Ethics Commission's jurisdiction do not impose a "legal duty to report" potentially illegal activity, a person may nonetheless do so. A person who decides to report such activity should turn over to the proper authorities all evidence regarding the activity in question.

SUMMARY

Whether the conduct described in the request letter constitutes legislative bribery under chapter 302 of the Government Code depends on all the relevant facts. It is never our role in opinions to resolve fact issues.

¹ We note that in addition to the legislative bribery provisions in chapter 302 of the Government Code, the bribery statute in the Penal Code states that a person may not offer, confer, or agree to confer on a public servant, and a public servant may not solicit, accept, or agree to accept, a "benefit" as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion by the public servant. Penal Code § 36.02. Whether the bribery statute in the Penal Code applies to the conduct described in the request letter depends on additional facts.

We also note that the following conflict of interest provisions in chapter 572 of the Government Code apply to state officers and employees: A state officer or employee should not accept or solicit any gift, favor, or service that might reasonably tend to influence the officer or employee in the discharge of official duties or that the officer or employee knows or should know is being offered with the intent to influence the officer's or employee's official conduct; or intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another. Gov't Code §§ 572.051(1) and (5).