



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 482

October 13, 2008

Whether the expenditure restrictions for transportation and lodging in Chapter 305 of the Government Code apply in a situation in which prepayment is made for the transportation and lodging. (AOR-545)

The Texas Ethics Commission has been asked to consider whether a person subject to the restrictions on expenditures in section 305.024(a)(2)(A) of the Government Code makes a prohibited expenditure for transportation and lodging if the recipient makes a prepayment in full to the person providing the transportation and lodging. The requestor also asks that if a prohibited expenditure has not been made, what standard should be used to determine the amount of the prepayment.

The lobby law prohibits lobbyists from making expenditures for transportation or lodging unless a statutory exception applies. Gov't Code §§ 305.024(a)(2)(A)¹ and 305.025(3), (4), and (5).² For purposes of this request, it is presumed that an exception does not apply. It is also presumed that the transportation and lodging are not being provided with the intent to make a political contribution under Title 15 of the Election Code.

For purposes of the lobby law, the term "expenditure" is defined as a payment, distribution, loan, advance, reimbursement, deposit, or gift of money or any thing of value and includes a contract, promise, or agreement, whether or not legally enforceable, to make an expenditure. *Id.* § 305.002(5). In our opinion, the provision of transportation and lodging does not constitute an expenditure for purposes of Chapter 305 of the Government Code in a situation in which prepayment in full is made by the recipient to the person providing the transportation and lodging.

The remaining question relates to the appropriate standard to be used to determine the amount of prepayment. In considering an appropriate rate of reimbursement, we have stated in numerous opinions that the fair market value is the proper and applicable standard. Ethics Advisory Opinion Nos. 90 (1992) (to determine the value of the provision of a hunting lease); 319 (1996) (to determine the value of the use of a family member's asset for political purposes); 434 (2001) (to determine the amount of political contributions that may be used to pay a niece or nephew for campaign work). In line with those opinions, the fair market value is the proper and applicable standard for determining the amount of prepayment for the transportation and lodging at issue. As we have previously stated, the statutes we are authorized to interpret do not provide a basis for determining fair market value. Ethics Advisory Opinion No. 325 (1996). We have said that any reasonable method for determining value is acceptable in the sale of a piece of real property. *Id.* Similarly, any reasonable method for determining the fair market value of transportation and lodging is acceptable in determining the proper amount of prepayment for transportation and lodging. In arriving at a reasonable method, a factor that must be considered is the value of equivalent transportation and lodging in an arm's length transaction.

SUMMARY

The provision of transportation and lodging does not constitute an expenditure for purposes of Chapter 305 of the Government Code if prepayment in full is made by the recipient to the person providing the transportation and lodging. The fair market value is the standard for determining the amount of prepayment and any

reasonable method for determining the fair market value must factor in the value of equivalent transportation and lodging in an arm's length transaction.

¹ Section 305.024 provides in relevant part that except as provided by Section 305.025, a person registered as a lobbyist or a person on the registrant's behalf and with the registrant's consent or ratification may not offer, confer, or agree to confer an expenditure for transportation and lodging to the following individuals: state senators, state representatives, other elected or appointed state officers, legislative agency employees, executive agency employees, the immediate family of a member of the legislative or executive branch, and guests, when invited by an individual described previously.

² Section 305.025 provides in relevant part that section 305.024 does not prohibit:

(3) necessary expenditures for transportation and lodging when the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips, including attendance at informational conferences or an event described by Subdivision (4), but not including attendance at merely ceremonial events or pleasure trips;

(4) necessary expenditures for transportation, lodging, food and beverages, and entertainment provided in connection with a conference, seminar, educational program, or similar event in which the member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory; or

(5) an incidental expenditure for transportation as determined by commission rule.