



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 520

October 29, 2014

Whether an elected board member of a state agency in the executive branch may accept tuition, food, transportation, and lodging provided in connection with a seminar that is relevant to the member's official duties and for which the member does not provide any services. (AOR-588)

The Texas Ethics Commission ("commission") has been asked whether an elected board member of an agency in the executive branch of state government may accept tuition, food, transportation, and lodging (benefits) from a private party in connection with a seminar that is relevant to the member's official duties in amounts equal to what the state agency would or could pay. Additionally, the requestor asks whether the board member may accept the benefits if the value of the benefits exceeds the amount that the agency could pay for such purposes.¹ The requestor provides that the board member will not provide any services in consideration for the benefits. For the board member to accept the benefits, they must be permissible under the applicable laws under the commission's jurisdiction.²

Lobby Law: The benefits in question appear to be provided for the purpose of influencing administrative action, including the generation of goodwill.³ If that is indeed the case, the person providing the benefits is subject to the lobby registration and disclosure requirements.⁴ As a member of the executive branch, the board member is prohibited from soliciting, accepting, or agreeing to accept from a lobbyist (or from a person on the lobbyist's behalf and with the lobbyist's consent or ratification) the benefits unless they are specifically exempted from the prohibition.⁵ Ultimately, whether the lobby law permits the board member to accept the benefits in question depends on additional facts.

Penal Code: Chapter 36 of the Penal Code generally prohibits certain public servants from accepting a benefit from certain persons. Penal Code § 36.08.⁶ For example, a public servant in an agency performing regulatory functions or conducting inspections or investigations may not solicit, accept, or agree to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency. Id. § 36.08(a). Similarly, a public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion. Id. § 36.08(d). However, the Penal Code includes several exceptions to the prohibitions.⁷ Whether Chapter 36 permits the board member to accept the benefits in question depends on additional facts.

Campaign Finance Law: Title 15 of the Election Code prohibits the board member, as an elected public officeholder, from accepting a political contribution from certain persons and during certain periods of time.⁸ A political contribution includes both a campaign contribution and an officeholder contribution. Elec. Code § 251.001(5). A campaign contribution is a transfer of any thing of value to a candidate that is offered or given with the intent that it be used in connection with a campaign for elective office. Id. § 251.001(2), (3). An officeholder contribution is a transfer of any thing of value to an officeholder that is offered or given with the intent that it be used to defray expenses that are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office and are not reimbursable with public money. Id. § 251.001(2),(4).

However, an expenditure required to be reported under the lobby law is not considered a contribution under the campaign finance law. Id. § 251.001(2). Whether the benefits in question constitute a permissible political contribution depends on additional facts.

Expenditure by a Lobbyist or Organization Sponsoring a Seminar

The requestor also asks whether our analysis would change if the person providing the goods and services is a registered lobbyist. The status of the provider as a lobbyist does not change our previous analysis.⁹ The requestor also asks if our analysis would change if the person providing the benefits in question is the organization conducting the seminar or another third party. The status of the provider as the same person conducting the seminar does not change our previous analysis.

SUMMARY

An elected board member of an agency in the executive branch of state government may accept tuition, food, transportation, or lodging only if acceptance is not prohibited under the applicable laws.

¹ If the benefits in question are gifts to the state agency (not to the individual board member), then the laws under the commission's jurisdiction do not apply. See Ethics Advisory Opinion Nos. 268 (1995), 130 (1993), 118 (1993), 63 (1992), 31 (1992).

² A state agency may set standards or may be subject to laws with standards that are stricter than the laws under the commission's jurisdiction. This opinion addresses only the laws under the commission's jurisdiction.

³ See Ethics Advisory Opinion No. 90 (1992).

⁴ A person must register with the commission if the person makes total expenditures of more than \$500 in a calendar quarter for certain activities to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action. Gov't Code § 305.003(a)(1); 1 T.A.C. § 34.41(a). We assume that the benefits in question would exceed that threshold.

⁵ Id. § 305.024 (exempting necessary expenditures for transportation, lodging, food, and beverages for certain purposes).

⁶ Section 36.02 of the Penal Code also prohibits bribery. Penal Code § 36.02(a). We assume there is no bribery involved in the situation presented by the requestor.

⁷ For example, section 36.08 of the Penal Code does not apply to a political contribution; a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code; or food, lodging, transportation, or entertainment accepted as a guest and reported in accordance with any applicable reporting requirement. Id. §§ 36.10(4), (5); 36.10(b).

⁸ For example, a candidate or officeholder may not accept a political contribution from a corporation or labor organization. Elec. Code § 253.094(a). A statewide officeholder may not accept a political contribution during the period beginning on the 30th day before the date a regular legislative session convenes and continuing through the 20th day after the date of final adjournment. Id. § 253.034(b). See generally, chapter 253, Election Code.

⁹ It is possible for a person to make a gift to a state agency to influence administrative action. Ethics Advisory Opinion No. 31 (1992). However, the lobby law does not regulate gifts to a state agency.