



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 537

*April 8, 2016*

*Whether a legislator may accept a tax deduction for donating property to the state. (AOR-609)*

The Texas Ethics Commission (“commission”) has been asked whether a legislator may accept a tax deduction under certain circumstances. The requestor of this opinion states:

A member of the legislature owns property of x value. The member decides to donate that property to a state entity, in this example, the Texas Department of Transportation. The member’s donation to the state would qualify as a tax-deductible donation. Would the member be able to take the deduction or is that prohibited?

The requestor also asks whether it would be permissible for a legislator to accept a qualifying tax deduction for a donation of money in any amount to the state.

The laws under the commission’s authority include chapter 36 of the Penal Code, which prohibits a legislator from soliciting, accepting, or agreeing to accept a benefit from any person unless a specific exception under section 36.10 of the Penal Code applies.<sup>1</sup> Penal Code § 36.08(f); *see also id.* § 36.09(a) (a person may not offer, confer, or agree to confer a benefit on a public servant that he knows the public servant is prohibited by law from accepting). A “benefit” is “anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.” *Id.* § 36.01(3); *see also* Ethics Advisory Opinion Nos. 254 (1995) (payments of money are benefits), 60 (1992) (a benefit is anything reasonably regarded as monetary gain or advantage).

A tax deduction is generally defined as “an amount subtracted from gross income when calculating adjusted gross income, or from adjusted gross income, when calculating taxable income.” Black’s Law Dictionary 501 (10th ed. 2014). Depending upon the applicable tax laws, a tax deduction may therefore result in a reduction of the amount of tax payable by an individual.<sup>2</sup> To the extent that a reduction in the amount of tax owed is a “benefit” for purposes of the prohibition in section 36.08(f) of the Penal Code, a legislator would be prohibited from accepting such a benefit unless there is an applicable exception in section 36.10 of the Penal Code.

Section 36.10 of the Penal Code provides an exception for:

a fee prescribed by law to be received by a public servant or *any other benefit to which the public servant is lawfully entitled* or for which he gives legitimate consideration in a capacity other than as a public servant.

Penal Code § 36.10(a)(1) (emphasis added). In our opinion, the exception for “any other benefit to which the public servant is lawfully entitled” would apply to the circumstances described by the requestor if the applicable federal or Texas tax laws entitle the legislator to receive a deduction that reduces the legislator’s taxable income and the amount of the legislator’s payable tax. Additionally, we assume that the valuation of the donation is not connected to the legislator’s status as a public servant. If the legislator is lawfully entitled to the deduction in

those circumstances, section 36.08 of the Penal Code would not prohibit the legislator from accepting the deduction.

### SUMMARY

A legislator may accept a tax deduction for the donation of property or money to the state if the legislator is lawfully entitled to receive the deduction under the applicable federal or Texas tax laws and the valuation of the donation is not connected to the legislator's status as a public servant.

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1 The facts presented by the requestor do not indicate that the tax deduction in question is a political contribution regulated by title 15 of the Election Code or a lobby expenditure regulated by chapter 305 of the Government Code. Similarly, the facts do not implicate the bribery or honoraria prohibitions in chapter 36 of the Penal Code. Thus, we consider only the application of the gift prohibitions in section 36.08 of the Penal Code to the circumstances described by the requestor.

2 For federal income tax purposes, certain charitable contributions made within the taxable year may be allowable as a deduction. 26 U.S.C. § 170.