



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 543

May 17, 2017

Whether reimbursements for certain travel expenses to the executive director of a state agency are prohibited honoraria or benefits under chapter 36 of the Penal Code, and whether the reimbursements are required to be reported on a personal financial statement. (AOR-621)

The Texas Ethics Commission (commission) has been asked whether the reimbursements of certain travel expenses to the executive director of a state agency are permissible and whether the reimbursements must be reported on a personal financial statement.

Facts

The requestor of this opinion is the executive director (director) of a state agency that regulates a particular industry. The director states that a national voluntary association has as members government agencies with jurisdiction to administer laws within the states, the District of Columbia, and United States territories regulating the industry. The executive heads of the agencies are voting members of the association.¹ The association's board of directors is an executive committee that includes the executive heads of these agencies, including the director. The executive committee is responsible for the association's management and budget and has additional powers, including the authority to expend the association's funds and administer the association's annual national conference. The director is a member of the executive committee and attends the executive committee's biannual meetings.

The director describes a scenario in which the association reimburses the director for travel expenses to attend the executive committee meetings. The expenses include airfare to attend the meetings, which would be paid by the state agency, and expenses incurred by the director for meals and ground transportation. The association would reimburse the director for the airfare, meals, and ground transportation expenses, and the director would then reimburse the state agency for the airfare expense.² The director states that the state agency can legally pay for the travel expenses at issue and accept reimbursement for the expenses as a gift.³

¹ The association also has non-voting associate members, including other government regulatory organizations, trade associations, professional and service organizations representing industry businesses, and industry businesses.

² The director states that the association would also provide lodging for the director by paying a hotel directly.

³ The director states that one of the director's job duties is to represent the agency to stakeholders, other agencies, legislative members, the industry, and the public. The director refers to section 660.003 of the Government Code,

Penal Code Restrictions

The director asks whether the reimbursement for the travel expenses are prohibited “honoraria” or “benefits” under chapter 36 of the Penal Code.

A public servant is prohibited from accepting an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant’s official position or duties. Penal Code § 36.07(a). Additionally, section 36.08 of the Penal Code prohibits a public servant from accepting a benefit from a person who is subject to the public servant’s jurisdiction. *Id.* § 36.08.⁴ 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).

According to the facts presented, the state agency would be permitted to pay the travel expenses. In several opinions, we have held that a state agency employee who, at the direction of their employing agency, attends a seminar that is related to their work for the agency does not receive a “benefit” if the seminar fee is waived or if the employee receives food, transportation, or lodging to attend the seminar. *See* Ethics Advisory Opinion Nos. 130, n. 2 (1993) (agency with authority to accept gifts may accept a waiver of fees for an employee to attend a seminar relevant to the employee’s work for the agency, and acceptance of food provided at seminar would likely be permissible if the agency can pay for the food in those circumstances); 118 (1993) (state employee who, at the direction of his employing agency, attends a seminar relevant to his job is not obtaining a “benefit”); 63 (1992) (state employee accepting tuition, food, transportation, and lodging payable by the agency at a seminar relevant to the employee’s job, and at the direction of the agency, is not receiving a “benefit” and chapter 36 of the Penal Code does not apply because the benefit would be to the state); and 51 (1992) (state employee who, at the direction of his employing agency, attends a seminar to acquire information relevant to his job is not obtaining a “benefit”).⁵ In those circumstances, the benefit would be to the employee’s agency.

Based on the facts presented, the benefit of the reimbursement would be to the state agency, and the director would not receive a “benefit” for purposes of section 36.08 of the Penal Code by accepting the reimbursement.⁶ Likewise, the director would not receive an “honorarium” for

which authorizes a state agency to pay a travel expense when certain conditions are met, including if the purpose of the travel clearly involves official state business and is consistent with the agency’s legal authority. *See* Gov’t Code § 660.003(e)(2). Based on those representations, we assume that the agency has authority to pay such expenses and to accept reimbursement for the expenses. *See generally* Ethics Advisory Opinion No. 31 (1992).

⁴ The prohibition on accepting benefits depends on the specific circumstances, including the public servant’s agency and official duties and the relationship that the person offering the gift has to the public servant or the agency. *See generally* Penal Code § 36.08.

⁵ *See also* Ethics Advisory Opinion No. 368 (1997) (waiver of a fee for a county judge to attend a legal seminar would be a benefit to the county, not to the judge, if the cost to attend the seminar would be reimbursable with county funds); Ethics Advisory Opinion No. 31 (1992) (private company presenting a program for state agency employees in their official capacity would be an expenditure to benefit the agency, not a lobby expenditure).

⁶ Whether a particular state agency may accept gifts is governed by law outside the commission’s jurisdiction. Ethics Advisory Opinion No. 130 (1993). It is also for the particular agency to determine whether any reporting requirements apply to the acceptance of a gift.

purposes of section 36.07(a) of the Penal Code by accepting the reimbursement because the benefit would be to the state agency.⁷

Personal Financial Statement Reporting Requirements

Section 572.023(b) of the Government Code requires a personal financial statement (PFS) to include an account of the financial activity of the individual required to file the statement for the preceding calendar year. Gov't Code § 572.023(a). The PFS must include the identification of a person or other organization from which the individual receives a gift of anything of value in excess of \$250 and a description of each gift. *Id.* § 572.023(b)(7).

The PFS also must include the identification of any person providing transportation, meals, or lodging expenses, and the amount of the expenses, permitted under section 36.07(b) of the Penal Code.⁸ *Id.* § 572.023(b)(11). Section 36.07(b) of the Penal Code provides that the prohibition on accepting honoraria does not apply to transportation and lodging expenses in connection with a conference or similar event in which the public servant renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory, or from accepting meals in connection with such an event. Penal Code § 36.07(b). Payments of such expenses are required to be reported under section 572.023(b)(11) of the Government Code only if they are “honoraria.”⁹ Ethics Advisory Opinion No. 370 (1997).

Based on the facts presented, the reimbursement of the travel expenses at issue would be a benefit to the state agency and would not be a gift or honorarium to the director for purposes of section 36.07(a) of the Penal Code, and therefore would not be required to be reported as a gift, permissible honorarium, or otherwise on the director’s PFS.

SUMMARY

Based on the requestor’s facts described in this opinion, the executive director of a state agency would not receive an “honorarium” for purposes of section 36.07(a) of the Penal Code or a “benefit” for purposes of section 36.08 of the Penal Code by accepting a reimbursement of certain travel expenses that are payable by the state agency. The executive director would not be required to report the reimbursement on a personal financial statement.

⁷ See also Tex. Att’y Gen. Op. No. GA-0256, at 3 (2004) (an honorarium falls within the definition of “benefit”).

⁸ The PFS must also include various sources of income, certain types of assets and liabilities, and other activities, none of which are at issue in this opinion.

⁹ Information required by section 572.023(b)(11) of the Government Code is reported on Part XIII of the PFS form.