



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 553

February 27, 2020

ISSUES

Whether section 36.07 of the Penal Code or section 253.034(a) of the Election Code prohibits an elected officeholder from accepting from a political committee transportation, lodging, and meals, or reimbursement for expenses for transportation, lodging, and meals, during a regular legislative session to attend and perform official actions at the political committee's meetings. (AOR-630)

SUMMARY

Neither section 36.07 of the Penal Code nor section 253.034(a) of the Election Code prohibits an elected officeholder from accepting from a political committee transportation, lodging, and meals, or reimbursement for expenses for transportation, lodging, and meals, during a regular legislative session to attend and perform official actions at the political committee's meetings provided that the officeholder renders services at the meeting that are not merely perfunctory.

FACTS

The requestor of this opinion is an elected officeholder who is subject to the moratorium on accepting political contributions during a regular legislative session. The officeholder is also a member of a political committee. The officeholder wishes to (1) attend a multi-day meeting or series of meetings of the political committee to participate in panel discussions, subcommittee meetings, receptions, dinners, luncheons, and speeches, and (2) perform official actions directly related to the political committee's mission and purpose. The officeholder asks that we assume the participation and official actions are services that are not merely perfunctory. The officeholder would like to accept from the political committee transportation, lodging, and meals, or reimbursement for expenses for transportation, lodging, and meals, during a regular legislative session to attend the meeting or series of meetings and perform the official actions.

ANALYSIS

The relevant laws that we must consider are section 36.07 of the Penal Code and section 253.034 of the Election Code, which restrict certain officeholders from accepting benefits in certain circumstances.

Honorarium Prohibition

Section 36.07 of the Penal Code states, in relevant part:

(a) A public servant commits an offense if the public servant solicits, accepts, or agrees to accept 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.

(b) This section does not prohibit a public servant from accepting 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.

(b-1) Transportation, lodging, and meals described by Subsection (b) are not political contributions as defined by Title 15, Election Code.¹

Penal Code § 36.07.

According to the facts presented in this request, the officeholder would participate in the meetings and provide services, at least in part, in the officeholder's capacity as a public servant. Thus, the honorarium prohibition in section 36.07(a) of the Penal Code would prohibit the officeholder from accepting the transportation, lodging, and meals, or the reimbursement for expenses for transportation, lodging, and meals, except as provided by section 36.07(b).

The exception under section 36.07(b) applies if transportation, lodging, and meals, or the reimbursement for expenses for transportation, lodging, and meals, are "in connection with a conference or similar event in which the public servant renders services."² The term

¹ "Political contribution" means a campaign contribution or an officeholder contribution. Elec. Code § 251.001(5). "Campaign contribution" means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution. *Id.* § 251.001(3). "Officeholder contribution" means a contribution to an officeholder or political committee 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(4).

² See, e.g., Ethics Advisory Opinion Nos. 273 (1995) (a legislator may accept expenses for travel, lodging, and meals in connection with a speaking engagement), 54 (1992) (a state agency employee may accept lunch from a nonprofit organization provided during a speaking engagement in connection with a conference or similar event), 18

“conference” is not defined in the Penal Code and we therefore construe that term according to the rules of grammar and common usage.³ Black’s Law Dictionary defines “conference,” in part, as a convention or a “meeting held to deliberate on a subject and [usually] decide how to proceed.” Black’s Law Dictionary 360 (10th ed. 2014). We also determined in Ethics Advisory Opinion No. 401 that the honorarium exception in section 36.07(b) of the Penal Code applies to expenses paid or provided to a state officer in connection with the officer’s appearance at a fundraiser to give a speech in support of a candidate for state or federal office. Ethics Advisory Opinion No. 401 (1998). Thus, in our opinion, a “conference or similar event” in section 36.07(b) of the Penal Code includes a political committee’s multi-day meeting or series of meetings. Additionally, the officeholder would be rendering services that are the same as or similar to addressing an audience or engaging in a seminar, which are examples provided by section 36.07(b). Therefore, section 36.07(a) would not prohibit the officeholder from accepting from the political committee transportation, lodging, and meals, or the reimbursement for expenses for transportation, lodging, and meals, to enable such participation.

Moratorium on Accepting Political Contributions During a Regular Legislative Session

Section 253.034 of the Election Code prohibits certain officeholders, including a statewide officeholder or a member of the legislature, from knowingly accepting a political contribution that is received 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. However, section 36.07(b-1) of the Penal Code expressly states that transportation, lodging, and meals described by section 36.07(b) are not political contributions. Because, as discussed above, the transportation, lodging, and meals at issue, or the reimbursement for expenses for transportation, lodging, and meals, are subject to the exception provided in section 36.07(b) of the Penal Code, they are not political contributions. Therefore, section 253.034(b) of the Election Code, applicable to the officeholder, would not prohibit the officeholder from accepting from the political committee the transportation, lodging, and meals, or the reimbursement for expenses for transportation, lodging, and meals, in these circumstances.

(1992) (a member of the legislative or executive branch of state government may accept payment for transportation, meals, and lodging expenses incurred in a speaking engagement at a nonprofit organization meeting), and 17 (1992) (a legislator may accept direct provision of, or reimbursement for, expenses for transportation, lodging, and meals incurred in connection with a speaking engagement at a conference or similar event).

³ Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Gov’t Code § 311.011(a). *See also* Black’s Law Dictionary at 405 (defining a convention, in part, as an “assembly or meeting of members belonging to an organization or having a common objective”).