



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 602

March 20, 2024

ISSUE

Whether employees of a state agency may provide a list of preferred items to non-profit entities that would be used in carrying out the agency's mission, if the gifts are not provided to employees for their personal use or enjoyment. (*AOR-698*).

SUMMARY

Under the facts presented, the solicitations would be for gifts to the agency rather than individual employees. Therefore, the Penal Code gift restrictions would not apply. Whether an agency may solicit or accept gifts is governed by other law specifically applicable to that agency, over which the Ethics Commission has no interpretive authority.

FACTS

The requestor represents a division of a state agency that investigates reports of alleged abuse, neglect, or financial exploitation of a certain population of individuals. The agency also provides short-term or emergency services to remedy substantiated cases of abuse, neglect or financial exploitation. Certain non-profit entities wish to assist the agency in its care of its clients. The requestor proposes providing a list of items that would be most beneficial to the agency in carrying out its mission. The requestor states that solicitations would be for gifts that would not be used by employees for their personal use or enjoyment and that the gifts would be used in carrying out the agency's powers and duties.

ANALYSIS

Absent an exception, a public servant is generally prohibited from soliciting or accepting "any benefit" from a person subject to the public servant's jurisdiction. *See* Tex Gov't Code §§ 36.08; 36.10 (providing exemptions to the general prohibition). However, gifts that primarily benefit the agency, rather than an employee of the agency are considered gifts to the agency. Tex. Ethics Comm'n Op. 31 (1992); *see also* Atty Gen, Op. JH-1309 at 4-5 (1978) (noting that an officer or employee may accept gifts on behalf of agency if agency has authority to accept gifts). *But see* Tex. Ethics Comm'n Op. 62 (1992) ("A consumable gift unrelated to an agency's mission would not be a gift to an agency.").

Providing a list of preferred items to a potential donor is soliciting a benefit. However, the requestor states the solicitation would be for items that would benefit the agency in providing

care to its clients and the items would not be for employees' personal use or enjoyment. Under the requestor's facts, the gifts would benefit the agency not the employees of the agency. Therefore, the proposed solicitations are for gifts to the agency rather than gifts to an employee of the agency. *See* Tex. Ethics Comm'n Op. 62 (1992), 31 (1992).

Whether an agency may solicit or accept gifts is not governed by Chapter 36 of the Penal Code or Chapter 305 of the Government Code (related to lobbying). Tex. Ethics Comm'n Ops. 62, 31. Instead, it is governed by other law specifically applicable to that agency, over which the Ethics Commission has no interpretive authority. Tex. Ethics Comm'n Op. 62 (1992), 31 (1992); Tex. Att'y Gen. Op. JM-684 (1987), JH-1180 (1978) (regarding statutory authority of state agencies to accept gifts).