



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 605

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*March 20, 2024*

### ISSUE

Whether a state university may provide prizes to randomly selected attendees of sporting events under Chapter 36 of the Penal Code when the recipient of the prize may be a university employee. (*AOR-702*).

### SUMMARY

Under the facts presented, providing prizes to attendees of sporting events would not be prohibited by Chapter 36 of the Penal Code even if a university employee receives a prize after being selected at random.

### FACTS

The requestor represents a state university's athletic department. During breaks at sporting events the university conducts "mini games" that can result in the participant receiving a prize, such as a \$100 gift card. The participants are chosen randomly from the spectators by the athletic department's interns. The spectators could include university employees or students who in turn could be chosen for the games. However, enrollment as a student or employment status is not a condition of being selected and not determined at any time during the selection process or event.

The requestor asks whether providing gifts to a university employee or student would be prohibited by Chapter 36 of the Texas Penal Code.

### ANALYSIS

In our opinion, Chapter 36 of the Penal Code would not prohibit a university from providing small gifts to a university employee for participating in a mini game at a sporting event provided the employee is selected randomly and without respect to his or her employment status.<sup>1</sup>

Chapter 36 of the Penal Code contains a number of prohibitions against public servants accepting benefits from persons subject to their jurisdiction, absent exception. Tex. Penal Code § 36.08. For example, section 36.08(a) prohibits a public servant from accepting a benefit from a person

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<sup>1</sup> The provision of a gift to a student as proposed in this opinion would not implicate the Penal Code because a person's status as a student, standing alone, does not make them a "public servant." Tex. Penal Code. § 1.07(a)(41).

the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

It is possible that a university employee in attendance may have oversight over the athletic department of the university. *See* Tex. Ethics Op. Nos. 118 (1993) (Section 36.08(a) could apply even when the gift giver and recipient are in the same agency); 100 (1992) (“Whether a state employee may accept a prize depends on the nature, value, and context of the prize.”). However, even if Section 36.08(a) could be implicated by a certain gifts to a university employee, it would not prohibit such a gift under these facts. This is because 36.08 does not apply to a “gift or other benefit conferred on account of . . . business relationship independent of the official status of the recipient.” Tex. Penal Code § 36.10(a)(2).

The requestor states the participants are chosen randomly from attendees of sporting events. The ticket for entry to the sporting event creates a business relationship independent of the official status of potential university employee in attendance. So long as the participants are chosen randomly, or without respect to employment status, any prize given for participation in a “mini game” would be based on an independent business relationship.