



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 620

March 11, 2025

ISSUE

Whether the use of a corporate aircraft may be provided to members of the legislature to attend an event at which the legislators will address an audience and learn about issues facing a West Texas border city. (AOR-720)

SUMMARY

The requestor or the requestor's corporation may grant the use of the aircraft to the legislators as long as it is used to transport the legislators to a conference or similar event where they provide a service, as long as the service is not merely perfunctory. However, the provision of the aircraft appears to be a lobby expenditure that will likely trigger lobby registration and reporting obligations for the person providing the use of the aircraft.

FACTS

The requestor is a West Texas businessman who by virtue of his ownership in one or more corporations (collectively referred to as "the corporation" or "his corporation") has access and the right to use a corporate aircraft that is registered to operate non-commercially.

The requestor has been asked by a local chamber of commerce ("the Chamber"), which is organized as a nonprofit corporation, to provide use of the corporate aircraft to transport a group of committee chairs of the Texas Legislature to attend an event in a West Texas border city. The Chamber's mission includes "setting the conditions for economic prosperity in the city . . . by fostering business."

The requestor states the event the Chamber intends to host will focus on border issues affecting Texas. If permissible, the requestor seeks to provide use of the corporate aircraft to fly 12 to 14 legislative committee chairs to the event and return them to Austin the same day.

Although the request states some details of the event have not been finalized, the Chamber plans on providing a tour of the area to the legislators, including showing the legislators projects that have been funded by the legislature or have a current open funding request. The legislators would also address the audience at the Chamber Event.

The requestor's personal use of the corporate aircraft is governed by a written timeshare agreement under which he is obligated either to recognize the value of the flight as additional income to him from his corporation under applicable IRS rules or to reimburse the corporation

for any such personal use by him and his guests. The amount the requestor is permitted to reimburse his corporation will be less than the cost of privately chartering a comparable aircraft and may or may not fully reimburse the corporation for the value or cost of the travel.

The requestor states that his only involvement in the event will be providing the use of the corporate aircraft at the request of the Chamber.

ANALYSIS

The requestor or the requestor’s corporation may provide the use of the aircraft the legislators provided it is used to transport the legislators to a conference or similar event where they provide a service, provided the service is not merely perfunctory.

Under the Penal Code a member of the legislature is prohibited from accepting “any benefit from any person,” unless a specific exception applies. Tex. Penal Code §§ 36.08(f); 36.10 (listing exceptions). Similarly, a person may not offer, confer, or agree to confer any benefit to a public servant that the person knows the public servant is prohibited from accepting. *Id.* § 36.09.

Two related exceptions allow for a public servant to accept transportation, lodging, and meals: 1) either as an exception to the general prohibition on honoraria; 2) or as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with the law. Tex. Penal Code § 36.10(a)(8), .10(b). Acceptance as a guest requires the presence of the giftor.

A public servant is generally 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. Tex. Penal Code § 36.07. However, a public servant may accept “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.” *Id.*, § 36.07(b).

The requestor states the members will provide services by addressing an audience at the event. Addressing an audience, such as giving a speech or participating in a seminar, are express examples of “providing a service” that serves as an exception to the honorarium prohibition. *Id.* .We caution, however, that the service must be more than “merely perfunctory.”

The term “perfunctory” is not defined in the Penal Code and we therefore construe that term according to the rules of grammar and common usage. “Perfunctory” is “characterized by routine or superficiality: mechanical” or “lacking in interest or enthusiasm.” Meriam Webster Online Dictionary.¹ While merely shaking hands or making introductions would be a perfunctory service, we have held that substantively engaging in “panel discussions,” “subcommittee meetings,” board meetings, and delivering speeches, would not. *See* Tex. Ethics Comm’n Op. No. 553 (2020).

¹ <https://www.merriam-webster.com/dictionary/perfunctory>.

The requestor did not provide specifics regarding the legislators' address to the audience. However, the requestor states the legislators would address an audience during a one-day event at which the legislators will be learning about the border city and related economic development projects. There is no indication that the legislators are being provided a pleasure trip with a perfunctory speech added in an attempt to take advantage of a Penal Code exception. We assume the requestor anticipates that the legislators would engage the audience in a substantive way regarding the topics of the event, which in the context of the request, would not be merely perfunctory.

Travel that is accepted under the exception to the honoraria prohibition is not a political contribution. Tex. Penal Code § 36.07(b-1). Therefore, it would not be subject to the restrictions on corporate political contributions or the moratorium on accepting political contributions during the regular legislative session. However, finding that the transportation is acceptable under Section 36.07(b) and under campaign finance laws does not exempt the requestor from the laws related to lobbying.

The facts suggest the provision of air travel is a lobby expenditure.

The key consideration to determine whether the laws regulating lobbying are implicated is whether the expenditure for travel is made “to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action” or to establish goodwill “for the purpose of later communicating to influence administrative or legislative action.” Tex. Gov’t Code §§ 305.003(a)(1), (2).

Not all expenditures for transportation will qualify as a lobby expenditure. For instance, a university could provide transportation to a legislator so that he can address students to educate them about legislative issues without implicating the lobby laws. However, the requestor states that the Chamber plans on showing the members projects that have been funded by the legislature or have a current open funding request. It therefore appears that the Chamber intends to speak directly with the legislators to influence legislation, including the funding of economic development projects.

A person is required to register as a lobbyist if the person makes a total expenditure greater than \$970 (a threshold that is adjusted annually for inflation) in a calendar quarter on certain activities to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action, unless an exception applies. This includes expenditures for “establishing goodwill with the member for the purpose of later communicating with the member to influence legislation or administrative action.” *Id.* § 305.002(2-a).

A person required to register must do so “not later than the fifth day after the date on which the person or the person's employee makes the first direct communication with a member of the legislative or executive branch that requires the person's registration.” *Id.* § 305.005(e).

It is not clear from the request whether the requestor will communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative

action after providing the use of the aircraft. If the requestor does so, it appears he will be required to register as a lobbyist.

A person required to register as a lobbyist may not provide a member of the legislature transportation or lodging unless “the purpose of the travel is to explore matters directly related to the duties of a member of the legislative or executive branch, such as fact-finding trips” or the transportation is “provided in connection with a conference, seminar, educational program, or similar event in which the member renders services, such as addressing an audience or engaging in a seminar, to the extent that those services are more than merely perfunctory.” *Id.* §§ 305.024, 025.

Under the facts presented, the Chamber event would be a fact-finding trip for which a lobbyist could provide transportation. As discussed above, the Chamber event is also an event similar to a conference at which the legislators will be addressing an audience. Therefore, a lobbyist could provide transportation to the event, provided the service provided by the legislators is more than merely perfunctory.