



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 622

March 11, 2025

ISSUE

Whether a part-time legislative staff member may accept outside employment assisting a registered lobbyist. (AOR-722)

SUMMARY

A legislative staff member may not accept outside employment assisting a registered lobbyist because such a dual role would put the legislative employee in a situation where he may reasonably be required or induced to disclose confidential information or where his official independence and judgement may be reasonably expected to be impaired.

FACTS

The requestor is a part-time staff member for a member of the legislature. The requestor works in the member's district office.

The requestor wishes to accept part-time employment from a registered lobbyist. The requestor's job duties for the lobbyist would include researching legislative issues and drafting letters that the lobbyist would deliver to members of the legislature with the intent to influence legislative action.

The requestor states he would not be in Austin or have direct personal interaction with members of the legislature as part of his work for the registered lobbyist.

ANALYSIS

Several laws prohibits a legislative employee from accepting outside employment with a lobbyist.

The proposed employment implicates Chapter 36 of the Penal Code.

Legislative employees are prohibited from accepting "any benefit from any person" unless a statutory exception exists. Tex. Penal Code §§ 36.08(f) (creating a general prohibition); 36.10 (listing exceptions).

Compensation received for employment is a benefit. *Id.* § 36.01. (defining a “benefit” as “anything reasonably regarded as pecuniary gain or pecuniary advantage.”).

However, compensation for outside employment is permissible under Chapter 36 of the Penal Code if the compensation is “conferred on account of . . . professional, or business relationship *independent* of the official status of the recipient.” *Id.* § 36.10(b)(2)(emphasis added).

Whether a lobbyist hires a legislative staffer for reasons “independent” from their position as a legislative employee is a fact question. But a lobbyist’s employment of a person who also works for the legislature—at the very least—raises serious questions as to whether such employment is “independent” of the staffer’s official status.

The effect of an advisory opinion is to provide those who reasonably rely on the opinion with a defense in a criminal prosecution or an action to impose a civil penalty. Tex. Ethics Comm’n Op. No. 147 (1993); Tex. Gov’t Code § 571.097. Based on the limited facts presented in this advisory opinion request we cannot say the proposed employment arrangement would be permissible under Sections 36.08 and 36.10 of the Penal Code.

Chapter 36 of the Penal Code also contains Texas’ bribery prohibition. *Id.* § 36.02. A public servant may not intentionally or knowingly accept any benefit as consideration for the recipient’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant. *Id.* Whether a public servant actually has the power to deliver the promised act is not a defense to bribery. *Id.* § 36.02(b).

Although the facts presented in this request do not indicate that the requestor would receive compensation for an exercise of official discretion, we note that the proposed employment would cast serious doubt as to the legitimacy of the requestor’s official acts.

The proposed employment implicates Chapter 39 of the Penal Code.

Chapter 39 of the Penal Code broadly prohibits a public servant from misusing information or property that has come into the person’s possession by virtue of the public servant’s office or employment. *See* Tex. Penal Code § 39.02 (abuse of official capacity); 39.06 (misuse of official information). Although the facts presented do not show that the proposed employment relationship would definitively violate provisions of Chapter 39 of the Penal Code, it would create a situation which would be susceptible to abuse.

The proposed employment violates Chapter 572 of the Government Code.

While a legislative staff member accepting employment with a lobbyist creates a situation ripe for violating a Penal Code statute as explained above, Chapter 572 of the Government Code includes standards of conduct for state employees meant to restrict a state employee from even entering into such a compromising situation. The law states that a state employee, “should not,” among other things:

- “accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;”
- “accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties;” or
- “intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised the officer's or employee's official powers or performed the officer's or employee's official duties in favor of another.”

Tex. Gov't Code § 572.051(2),(3),(5). As an employee of the Legislature, the requestor is expected to work in the best interest of the member's constituents and the State of Texas. An employee of a lobbyist is expected to work in the best interest of the lobbyist's clients. Accepting such a dual role would put the legislative employee in a situation where he may reasonably be required or induced to disclose confidential information or where his official independence and judgement may be reasonably expected to be impaired. The employment relationship with a lobbyist could also create a situation in which the legislative employee is rewarded by the lobbyist for using his power as a legislative employee—whatever that may be—to further the interests of the lobbyist's clients.

For those reasons a legislative employee accepting employment to assist a lobbyist would violate Section 572.051 of the Government Code. The only express sanction for a violation of Section 572.051 (that is not also a violation of another law) is possible termination of employment. *Id.* § 572.051(b).