

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-14

Re: Does a set of pre-recorded tapes of Oral Roberts reading the Bible and a tape recorder constitute a benefit under §36.01(5) of the Penal Code, and are members of the House of Representatives prohibited from accepting them?

This opinion responds to a request (AOR 1984-27) from The Honorable Gibson D. (Gib) Lewis, Speaker of the Texas House of Representatives, for a State Ethics Advisory Commission advisory opinion. The request was received by the Commission at its meeting on February 24, 1984, and relates to the following issue:

Does a cassette tape recorder with cassette recordings of Oral Roberts reading the Bible constitute a "benefit" under Section 36.01(5) of the Texas Penal Code, and are members of the Legislature prohibited from accepting them?

The facts presented in AOR 1984-27 involve a donation from an individual to several members of the legislature of cassette tape recordings and a small tape recorder. The tapes are recordings of Oral Roberts reading the Bible, and the donor states that additional tapes will be forwarded when completed. The donation of the tapes and tape recorder was not solicited. Members of the Legislature are concerned about whether they may lawfully accept the tape recorder and tapes, and they are awaiting an advisory opinion from the Commission.

Tex. Penal Code Ann. § 36.08(f) (Vernon Supp. 1984) prohibits members of the Legislature from soliciting, accepting, or agreeing to accept any benefit from any person. Section 36.01(5) defines "benefit" as:

anything reasonably regarded as economic gain or economic advantage, including benefit to any other person in whose welfare the beneficiary is interested, but does not include a contribution or expenditure made and reported in accordance with law.

The tapes and tape recorder as represented in this request cannot reasonably be regarded as an economic gain or economic advantage, and thus this donation does not constitute a "benefit" under Tex. Penal Code Ann. § 36.01(5) (Vernon Supp. 1984). Therefore, members of the legislature may accept the tapes and tape recorder.

Under the facts presented in this request, the aggregate value of the tape recorder and the tapes received from this donor during the calendar year do not appear to be in excess of \$250. Therefore, they are not reportable as a gift on the legislator's financial statement under Tex. Rev. Civ. Stat. Ann. art. 6252-9b (Vernon Supp. 1984).

If the tape recorder and the tapes are knowingly accepted by a legislator for the purpose of assisting him in the performance of duties or activities in connection with his office, and the goods are nonreimbursable by the state, then the officeholder is required to report the tapes and tape recorder as a contribution in accordance with Tex. Elec. Code Ann. art. 14.01(D)(2) (Vernon Supp. 1984).

SUMMARY

A member of the legislature may accept the cassette tape recorder and the Oral Roberts tapes because they do not constitute an economic gain or advantage. Under certain circumstances the donation would have to be reported as a contribution in accordance with Tex. Elec. Code Ann. art. 14.01(D)(2) (Vernon Supp. 1984).

State Ethics Advisory Commission
Adopted this 13th day of April, 1984.

5 - VOTING IN FAVOR 1 - PRESENT BUT NOT VOTING (REPRESENTATIVE STEVE WOLENS)
FORMAL DISSENT FILED BY MR. LEONARD DAVIS