

# STATE ETHICS ADVISORY COMMISSION

## ADVISORY OPINION 1984-8

Re: Whether it is lawful for a legislator to accept contributions of food, liquor or other beverages for use in his office during the session, and if so, under what statutes and by whom are they to be reported and are they to be reported as entertainment or as gifts.

This Opinion responds to a request (AOR 1984-7) from the Public Servant Standards of Conduct Advisory Committee for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on January 13, 1984 and relates to the following issues:

Is it lawful for a legislator to accept contributions of food, liquor or other beverages for use in his office during the session, and if so, under what statutes and by whom are they to be reported and are they to be reported as entertainment or as gifts?

Tex. Penal Code Ann. § 36.08(f) (Vernon Supp. 1984) states:

A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

The benefit prohibited by that section is defined in Tex. Penal Code Ann. § 36.01(5) (Vernon Supp. 1984) which provides that:

'Benefit' means 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. (Emphasis added.)

Texas law provides three possible reporting mechanisms that may exclude a contribution or expenditure from the definition of "benefit": Chapter 14 of the Election Code, which requires the reporting of political contributions; Tex. Rev. Civ. Stat. Ann. art. 6252-9b, which requires the disclosure of certain gifts; and Tex. Rev. Civ. Stat. Ann. art. 6252-9c, which requires the reporting of certain lobby expenditures. The facts surrounding the particular donation will determine which, if any, of these disclosure laws may apply.

This request concerns the donation of food, liquor, and other beverages to a legislator for use in his office during the session. Presumably, these items are used by the legislator or the legislator's staff for such activities as entertaining constituents who visit the legislator's office or for their own consumption.

Chapter 14 of the Election Code requires a legislator to report the acceptance of political contributions. Office-holder contributions are defined in Tex. Elec. Code Ann. art. 14.01(D)2) in pertinent part as follows:

any . . . transfer of . . . goods . . . or anything of value . . . knowingly accepted by an office-holder for the purpose of assisting such person in the performance of duties or activities in connection with the office which are nonreimbursable by the state. (Emphasis added.)

Therefore, the donation of items of value, including food, liquor, and other beverages, constitute reportable office-holder contributions if they are accepted by the legislator to assist him in the performance of duties or activities of his office. Since this request states that these items are donated "for use in his office", we assume that they are accepted by the office-holder for that purpose. Therefore, they constitute officeholder contributions and must be reported by the office-holder on the appropriate sworn statement filed under Chapter 14. The Commission notes that Tex. Elec. Code Ann. art. 14.03b, with an exception for certain campaign contributions, prohibits contributions to member of the legislature for 30 days preceding a regular

session and during the session. Therefore, to qualify as permissible office-holder contributions, the donation of food, liquor, and other beverages may not be given and accepted within this proscribed time period.

It is the opinion of this Commission, therefore, that a contribution of food, liquor, and other beverages during the session is not permitted by Chapter 14. Therefore, Chapter 14 is not a vehicle by which such a donation may be legally reported.

The second statute under which the items in question may be reportable is the financial disclosure provision of art. 6252-9b. To be reportable under this statute, the value of the "gifts" from a single donor must aggregate in excess of \$250 during the calendar year. Under the facts presented, it is not possible to determine whether the value of the food, liquor and other beverages exceeds the \$250 reporting threshold.

Even though art. 6252-9b may, in some instances, be available to remove the gifts in questions from the Penal Code definition of "benefit," it is the Commission's opinion that the donation remains subject to Chapter 14 of the Election Code. The prohibition on contributions during the session is not overcome by the possible reporting under another provision of law. Therefore, it is the Commission's opinion that a legislator would violate art. 14.03b of the Election Code by accepting a gift of food and liquor during the session despite any subsequent reporting under art. 6252-9b.

Finally, we must consider whether the Lobby Control Act (art. 6252-9c) is a reporting vehicle to remove the donation in question from the Penal Code. The facts presented in this request do not appear to be expenditures reportable as entertainment by a lobbyist. However, a registered lobbyist is also required to report "gifts and awards" under Section 6(b)(2)(B) of the act. This section expressly excludes "contributions as defined by article 14.01 of the Texas Election Code" from reportability by the lobbyist. Therefore, having held that the items in question are contributions within the art. 14.01 definition, it is the Commission's opinion that there is no permissible reportability under the Lobby Control Act.

The Commission notes that occasionally a constituent will give his legislator an incidental gift of food or beverage, such as a complimentary bottle of wine, which the legislator accepts as a matter of common courtesy. Since such incidental donations are not accepted by the legislator to assist him with his office activities, they do not constitute office-holder contributions. Although each donation must be viewed in light of the specific facts involved, normally such an incidental donation could not be reasonably regarded as economic gain or economic advantage and therefore, would not constitute a prohibited benefit under the Penal Code.

#### SUMMARY

A legislator may accept a contribution of food, liquor, and other beverages for use in his office if he reports the acceptance of such office-holder contribution in accordance with Chapter 14 of the Election Code. A legislator may not accept a contribution of food, liquor, and other beverages during the period beginning 30 days before the regular session and continuing through the day of final adjournment. A legislator may accept those incidental donations of food, liquor, and other beverages which he accepts only as a matter of common courtesy.

W. Page Keeton, Chairman  
State Ethics Advisory Commission  
Adopted this 13th day of April, 1984.