

THE STATE OF TEXAS

RESOLUTION: ESTABLISHMENT OF
GUIDELINES & RESTRICTIONS REGARDING
THE ACCEPTANCE OF GIFTS BY COUNTY
OFFICIALS & COUNTY EMPLOYEES
COMMRS. COURT

COUNTY OF COLLIN

On October 28, 1996, the Commissioners' Court of Collin County, Texas, met in **special session** with the following members present and participating, to wit:

Ron Harris
Phyllis Cole
Jerry Hoagland
John Witherspoon
Jack Hatchell

County Judge, Presiding
Commissioner, Precinct 1
Commissioner, Precinct 2
Commissioner, Precinct 3
Commissioner, Precinct 4

During such session the court considered the adoption of a resolution establishing guidelines and restrictions regarding the acceptance of gifts by County officials and County employees, providing for exemptions and penalties, and providing an effective date.

WHEREAS, the Commissioners' Court of Collin County hereby seeks to provide guidelines and restrictions on the acceptance of gifts by County officials and employees; and

WHEREAS, the foregoing guidelines and restrictions shall be intended to comply with the relevant provisions of state law, and shall act as to protect against any impropriety or the appearance of any impropriety by County officials and employees;

NOW, THEREFORE BE IT ORDERED BY THE COLLIN COUNTY COMMISSIONERS' COURT AS FOLLOWS:

Section 1

Prohibitions

- A. No County official or employee performing regulatory functions, or conducting inspections or investigations on behalf of the County or any department thereof shall solicit, accept or agree to accept any benefit from a person the official or employee knows to be subject to regulation, inspection, or investigation by the official, employee or any department of the County.
- B. No County official or employee who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government shall solicit, accept, or agree to accept any benefit from a person the official or employee knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of the County official's or employee's discretion.
- C. In the event a County official or employee receives an unsolicited benefit that he or she is prohibited from accepting under the terms of this Order, or otherwise prohibited under Section 36.08 of the Texas Penal Code, the official or employee may donate the benefit to the County or other governmental entity that has the authority to accept the gift, or to be recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.
- D. In the event a County official or employee is approached, or offered a benefit by a third party, the acceptance of which is prohibited by this Order or alternatively by Section 36.08 of the Texas Penal Code, the official or employee shall immediately report such incident to the County Judge.
- E. In the event a County official or employee is aware of a circumstance in which a County official or employee has accepted, or agreed to accept a benefit from a third-party in violation of this

Order, or alternatively in violation of Section 36.08 of the Texas Penal Code, the official or employee shall immediately report such incident to the County Judge.

Section 2

Exemptions

- A. The foregoing prohibitions contained in Section One of this Order shall not apply to the following:
- (1) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;
 - (2) an item with a value of less than Fifty Dollars (\$50.00), excluding cash or a negotiable instrument; or,
 - (3) food, lodging, transportation, or entertainment accepted by the County official or employee as a guest, and in such instance the County official or employee is accompanied or in the presence of the vendor or person providing such food, lodging, transportation, or entertainment.
- B. Exempt due to reporting required by other statutes as listed below and in accordance with LGC §36.10, page 112:
- (1) a benefit to a public servant required to file a statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes)¹, or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:
 - (a) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and
 - (b) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are non-reimbursable by the state or political subdivision;
 - (2) a political contribution as defined by Title 15, Election Code;²

¹ Repealed; see, now, V.T.C.A. Government Code § 572.001 et seq.

² V.T.C.A. Election Code, § 251.001 et seq.

Section 3

Penalties

A. In addition to the penalties prescribed by Section 36.08 of the Texas Penal Code, any violations of this Order may subject County employees to potential disciplinary action, including termination of employment.

Section 4

Miscellaneous

A. **Severability:** If any provision of this Order or the application of any provision to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the Order which can be given effect with the invalid provision or application, and to this end, the provisions of this Order are declared to be severable.

B. **Repeal:** All Orders in conflict with the provisions of this Order are hereby repealed to the extent of such conflict and replaced with the provisions of this Order.

C. **Effective Date:** This Order shall take effect immediately from and after its passage.

D. **Open Meetings Act:** The meeting at which this Order was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act, Ch. 551 Texas Government Code, (Vernon 1996 Supp.).

NOW THEREFORE, Commissioners' Court of Collin County, Texas, does hereby adopt the aforementioned resolution this the 28th day of October, 1996.



Ron Harris, County Judge



Phyllis Cole, Commissioner, Pct. 1



Jerry Hoagland, Commissioner, Pct. 2




John Witherspoon, Commissioner, Pct. 3



Jack Hatchell, Commissioner, Pct. 4

ATTEST:



Helen Starnes, Ex-Officio Clerk
Commissioners' Court
Collin County, T E X A S

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October 8, 1996

VIA FAX (214) 548-4699

Honorable Ron Harris
Collin County Judge
210 South McDonald
Suite 626
McKinney, Texas 75069

RE: proposed order regarding acceptance of gifts

Dear Judge Harris:

I am sorry I missed your telephone call yesterday. Please note that the proposed order I previously sent to you regarding the prohibitions on the acceptance of gifts by County employees and members of the Commissioners Court is intended to conform with Section 36.08 of the Texas Penal Code, which provides criminal penalties for the acceptance of gifts from vendors doing business with the County. Certain exceptions to the restrictions of Section 36.08 are contained in Section 36.10 of the Penal Code. The applicable exemptions include: 1) gifts of a value of less than \$50; 2) food, entertainment and lodging at events where the vendor is present; and 3) gifts given on account of personal kinship or friendship independent of the official status of the recipient.

Obviously, the intent of the statute is to avoid impropriety or the appearance thereof between County employees and officials and vendors doing business with the County. I have added provisions to the proposed order requiring disclosure to the County Judge for all such gifts, so that no employee or Commissioner inadvertently violates the statute.

I have enclosed copies of Sections 36.08 and 36.10 for your reference. Please call me if you have further questions regarding this matter.

Sincerely,



J. Greg Hudson

Enclosure

BRIBERY & CORRUPT INFLUENCE
Ch. 36

§ 36.08

§ 36.08. Gift to Public Servant by Person Subject to his Jurisdiction

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be subject to regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A member of the legislature, the governor, the lieutenant governor, or a person employed by a member of the legislature, the governor, the lieutenant governor, or an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any benefit from any person.

(g) A public servant who is a hearing examiner employed by an agency performing regulatory functions and who conducts hearings in contested cases commits an offense if the public servant solicits, accepts, or agrees to accept any benefit from any person who is appearing before the agency in a contested case, who is doing business with the agency, or who the public servant knows is interested in any matter before the public servant. The exception provided by Section 36.10(b) does not apply to a benefit under this subsection.

(h) An offense under this section is a Class A misdemeanor.

(i) A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section may donate the benefit to a governmental entity that has the authority to accept the gift or may donate

§ 36.08

PUBLIC ADMINISTRATION Title 8

the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1983, 68th Leg., p. 3238, ch. 558, § 5, eff. Sept. 1, 1983; Acts 1991, 72nd Leg., ch. 304, § 4.04, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

Historical and Statutory Notes

For saving provisions of the 1975 Act see note set out under § 1.07.

The 1975 amendment inserted "pecuniary" in subsecs. (a) to (f) and, in subsec. (f), substituted "any person" for "a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal".

The 1983 amendment deleted "pecuniary" preceding "benefit" in subsecs. (a) to (f).

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of Act, see note under § 36.01.

The 1991 amendment, in subsec. (f), deleted "public servant who is a" preceding "member

of", deleted, following "member of" "or employed by", and inserted "the governor, the lieutenant governor", "person employed", and "member of the legislature, the governor, the lieutenant governor, or"; inserted subsec. (g), and redesignated former subsec. (g) as subsec. (h).

For effective date and application of the 1991 act, see notes following § 36.01.

The 1993 amendment, in subsec. (g), made a nonsubstantive change; and added subsec. (i).

Prior Laws:

Rev.P.C.1911, art. 374.

Vernon's Ann.P.C. (1925) art. 372.

Cross References

"Agency" defined, see V.T.C.A. Penal Code, § 1.07.

"Benefit" defined, see V.T.C.A. Penal Code, §§ 1.07.

Bribery,

Generally, see V.T.C.A. Penal Code, § 36.02.

Legislature, see V.T.C.A. Government Code, § 302.031 et seq.

"Custody" defined, see V.T.C.A. Penal Code, § 36.01.

"Government" defined, see V.T.C.A. Penal Code, § 1.07.

"Person" defined, see V.T.C.A. Penal Code, § 1.07.

"Public servant" defined, see V.T.C.A. Penal Code, § 1.07.

Punishment, Class A misdemeanor, see V.T.C.A. Penal Code, § 12.21.

Law Review Commentaries

Conduct of judges judicial ethics. 42 Texas Bar J. 211 (1979).

Library References

Officers and Public Employees §§ 121, 122.
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 255 to 263.

Notes of Decisions

Agencies 7

Benefits 2

Consideration 4

Construction with other laws 1

Hearing examiner 8

Honoraria 5

Legislators 6

Person 3

1. Construction with other laws

Penal Code § 36.02 prohibiting conferring of a benefit upon a public servant as consideration for violation of one of his duties and Penal Code § 36.08 prohibiting a public servant who is em-

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BRIBERY & CORRUPT INFLUENCE

Ch. 36

§ 36.08
Note 6

ployed by tribunal having judicial or administrative authority from soliciting, accepting, or agreeing to accept any benefit from a person the public servant knows is interested in any matter before the tribunal, are not in pari materia; both are broad and general statutes having different elements of proof and different purposes and objectives, and neither statute controls the other. *Cerda v. State* (App. 13 Dist.1988) 750 S.W.2d 925, review refused.

2. Benefits

If a benefit was a legitimate professional fee an offense cannot be established under this section. Op.Atty.Gen.1975, No. H-614.

Contributions for election expenses or non-reimbursable office expenses do not constitute "pecuniary benefits" if legally reported as contributions under the Election Code; such contributions are not, therefore, within the scope of this section and § 36.07. Op.Atty.Gen.1977, No. H-954.

A member of the legislature may accept a donation from an individual of a small cassette tape recorder and cassette tape recordings of an individual reading the Bible because they do not constitute an economic gain or advantage and thus are not a "benefit" under subd. (5) of § 36.01; however, under certain circumstances the donation would have to be reported as a contribution in accordance with V.A.T.S. Election Code, art. 14.01(D)(2). State Ethics Advisory Commission Opinion 1984-14.

As a general rule, the receipt of a plaque could not be reasonably regarded as pecuniary advantage and is therefore not a benefit for purposes of Chapter 36 of the Penal Code. Tex.Ethics Comm.Op. No. 36 (1992).

"Benefit," for purposes of Chapter 36 of the Penal Code, does not include promotional or commemorative items of minimal value such as caps, coffee mugs, tee shirts, and key rings if such items are unsolicited and not offered or accepted in exchange for any action or inaction on the part of a public servant. Tex.Ethics Comm.Op. No. 61 (1992).

Food and beverages provided at a reception are not prohibited benefits under sections 36.08 and 36.09 of the Penal Code if the person providing the food and beverages is present at the reception and if the donor or donee, as applicable, complies with any applicable reporting requirement. Tex.Ethics Comm.Op. No. 64 (1992).

Whether a state employee may accept a prize depends on the nature, value, and context of the prize. The provisions in the lobby statute and the Penal Code apply to gifts and expenditures made both during working hours and outside of working hours. Tex.Ethics Comm.Op. No. 100 (1992).

A subscription to a magazine may be a benefit if it is of more than minimal value. Tex.Ethics Comm.Op. No. 120 (1993).

3. Person

A state college or university is a "person" for purposes of the Penal Code. Therefore, various prohibitions in section 36.08 of the Penal Code on public servants' acceptance of benefits from any "person" apply to the acceptance of benefits from state colleges and universities. Generally, tickets to intercollegiate athletic events are benefits. For a state college or university to satisfy the "guest" exceptions in section 36.10 in regard to athletic events, an individual officer or employee must have some direct contact with the legislator, and the guest and host must be in reasonable physical proximity and have easy access to each other during the game. Tex.Ethics Comm.Op. No. 69 (1992).

A city is a "person" for purposes of the Penal Code. Therefore, a legislator may not accept a "benefit" from a city unless one of the exceptions set out in section 36.10 of the code is applicable. Tex.Ethics Comm.Op. No. 75 (1992).

Non-incumbent legislators-elect are not "members of the legislature" for purposes of section 36.08(f) of the Penal Code. Tex.Ethics Comm.Op. No. 88 (1992).

4. Consideration

The offering of a gift to a public servant has no consideration requirement; offeror must merely know that the offeree is prohibited by law from accepting the benefit. *Hubbard v. State* (App. 5 Dist.1984) 668 S.W.2d 419, remanded 739 S.W.2d 341, on remand 770 S.W.2d 31, review refused.

5. Honoraria

Depending on the circumstances, receipt by a member of the legislature of an honorarium, may be a gift prohibited under this section. Op.Atty.Gen.1975, No. H-551.

An honorarium offered a public official must be measured against this chapter and Vernon's Ann.Civ.St. art. 6252-9b; before an honorarium may be legally accepted, it must satisfy requirements of both statutes. Op.Atty.Gen.1979, No. MW-90.

6. Legislators

A contribution by a business corporation to a nonprofit organization conducting nonpartisan research for a legislative caucus is not necessarily prohibited by or subject to V.A.T.S. Bus. Corp. Act, Vernon's Ann.Civ.St. art. 1349 (repealed), the Political Funds Reporting and Disclosure Act (V.A.T.S. Election Code, art. 14.01 et seq.; repealed, now V.A.T.C. Election Code,

§ 36.08

Note 6

§ 31.035), the Lobby Act (Vernon's Ann.Civ.St. art. 6252-9c; repealed) or this chapter. Op. Atty.Gen.1983, No. JM-50.

A legislator may accept a contribution of food, liquor, and other beverages for use in the legislator's office if the legislator reports the acceptance of such office-holder contribution in accordance with V.A.T.S. Election Code, art. 14.01 et seq. (repealed; now V.A.T.C. § 31.035), but 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; the legislator may accept those incidental donations of food, liquor, and other beverages which the legislator accepts only as a matter of common courtesy. State Ethics Advisory Commission Opinion 1984-8.

A person or organization required to register as a lobbyist may not pay or provide for transportation and lodging expenses for a legislator in connection with a hunting trip, and a legislator may not accept the payment of expenses for the provision of transportation or lodging from a person required to register as a lobbyist. Tex.Ethics Comm.Op. No. 12 (1992).

State university using state funds to furnish a speaker to provide information to state legislators relevant to their official position is not providing a benefit to the legislators for purposes of chapter 36 of the Penal Code. Tex.Ethics Comm.Op. No. 88 (1992).

A legislator may not accept payment from a city for lobbying the state legislature. Tex.Ethics Comm.Op. No. 123 (1993).

Gifts from legislators to legislative staff members and gifts from committee chairs to committee members may be permissible under Penal Code § 36.10(a)(2) which provides an exception for gifts given on the basis of an independent relationship. Tex.Ethics Comm.Op. No. 139 (1993).

As long as a state legislator is providing services to a city in a capacity other than as a legislator and as long as the prohibition on honoraria is not applicable, a state legislator may accept a salary for working for city. Whether funds come from a public or private source is irrelevant to the application of the

PUBLIC ADMINISTRATION

Title 8

honorarium provision. Under the prohibition on honoraria a legislator could not accept a fee for teaching if the legislator would not have been asked to speak but for his position as a legislator, regardless of whether payment comes from a public or private source. Tex.Ethics Comm.Op. No. 148 (1993).

The provisions subject to interpretation by the Ethics Commission do not prohibit a legislator or his law firm from entering into a contract to assist with the collection of delinquent property taxes for a local taxing authority. Tex.Ethics Comm.Op. No. 156 (1993).

7. Agencies

Texas Board of Polygraph Examiners is not authorized to accept gifts from the Texas Association of Polygraph Examiners, a private organization composed of members subject to regulation by the board. Op.Atty.Gen.1978, No. H-1180.

A state employee who, at the direction of his employing agency, attends a seminar to acquire information relevant to his job is not obtaining a "benefit" for purposes of Chapter 36 of the Penal Code. Tex.Ethics Comm.Op. No. 51.

The prohibition set out in § 36.08(a) of the Penal Code does not apply to a gift from a board member to an employee subject to the direction of the board. Tex.Ethics Comm.Op. No. 118 (1993).

Acceptance of gifts by a state agency is governed by laws that are not subject to interpretation by the Ethics Commission. Whether a state employee may accept a gift depends on the status of the donor and the donee as well as the nature of the gift. Tex.Ethics Comm.Op. No. 130 (1993).

8. Hearing examiner

A hearing examiner is not prohibited from accepting transportation and meals in connection with a substantive presentation to provide information about the hearings examiner's agency, regardless of whether individual members of the group attending the presentation may have contested cases pending before the agency. Tex.Ethics Comm.Op. No. 152 (1993).

§ 36.09. Offering Gift to Public Servant

(a) A person commits an offense if he offers, confers, or agrees to confer any benefit on a public servant that he knows the public servant is prohibited by law from accepting.

(b) An offense under this section is a Class A misdemeanor.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

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Ch. 36

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BRIBERY & CORRUPT INFLUENCE

Ch. 36

§ 36.10

Historical and Statutory Notes

The 1993 amendment made no apparent change.

Cross References

"Benefit" defined, see V.T.C.A. Penal Code, § 1.07.
"Law" defined, see V.T.C.A. Penal Code, § 1.07.
"Person" defined, see V.T.C.A. Penal Code, § 1.07.
"Public servant" defined, see V.T.C.A. Penal Code, § 1.07.
Punishment, Class A misdemeanor, see V.T.C.A. Penal Code, § 12.21.

Library References

Officers and Public Employees §§ 121, 122. C.J.S. Officers and Public Employees §§ 255 to 263.
WESTLAW Topic No. 283.

Notes of Decisions

In general 2
Mental state 3
Purpose 1

1. Purpose

This section is designed to discourage generally buying the favors of public officials. *Hubbard v. State* (App. 5 Dist.1984) 668 S.W.2d 419, remanded 739 S.W.2d 341, on remand 770 S.W.2d 31, review refused.

2. In general

Offering of a gift to a public servant statute (§ 36.09) proscribes different behavior than does bribery statute (§ 36.02), since the former statute does not require consideration while the latter does, and since different culpable mental states are required. *Hubbard v. State* (App. 5 Dist.1984) 668 S.W.2d 419, remanded 739 S.W.2d 341, on remand 770 S.W.2d 31, review refused.

The offering of a gift to a public servant has no consideration requirement; offeror must merely know that the offeree is prohibited by law from accepting the benefit. *Hubbard v. State* (App. 5 Dist.1984) 668 S.W.2d 419, review

granted, remanded 739 S.W.2d 341, on remand 770 S.W.2d 31, review refused.

Food and beverages provided at a reception are not prohibited benefits under sections 36.08 and 36.09 of the Penal Code if the person providing the food and beverages is present at the reception and if the donor or donee, as applicable, complies with any applicable reporting requirement. *Tex.Ethics Comm.Op. No. 64* (1992).

3. Mental state

Because recklessness, which is culpable mental state required by § 36.09 that prohibits offering of a gift to a public servant, is a lesser culpable mental state than intent or knowledge, which is required culpable mental state of bribery statute (§ 36.02) a different range of conduct is prohibited by the two sections. *Hubbard v. State* (App. 5 Dist.1984) 668 S.W.2d 419, remanded 739 S.W.2d 341, on remand 770 S.W.2d 31, review refused.

Since this section prohibiting the offering of a gift to a public servant does not prescribe a culpable mental state, the required mental state for such offense, is either intent, knowledge, or recklessness. *Hubbard v. State* (App. 5 Dist.1984) 668 S.W.2d 419, remanded 739 S.W.2d 341, on remand 770 S.W.2d 31, review refused.

§ 36.10. Non-Applicable

(a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

§ 36.10

PUBLIC ADMINISTRATION Title 8

(3) a benefit to a public servant required to file a statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes),¹ or a report under Title 15, Election Code, that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a political contribution as defined by Title 15, Election Code;²

(5) a gift, award, or memento to a member of the legislative or executive branch that is required to be reported under Chapter 305, Government Code;

(6) an item with a value of less than \$50, excluding cash or a negotiable instrument as described by Section 3.104, Business & Commerce Code; or

(7) an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the governmental entity.

(b) Section 36.08 (Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donee is required by law to report those items, reported by the donee in accordance with that law.

(c) Section 36.09 (Offering Gift to Public Servant) does not apply to food, lodging, transportation, or entertainment accepted as a guest and, if the donor is required by law to report those items, reported by the donor in accordance with that law.

Acts 1973, 63rd Leg., p. 883, ch. 399, § 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2707, ch. 738, § 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3240, ch. 558, § 6, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 472, § 60, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, § 4.05, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, § 1.01, eff. Sept. 1, 1994.

¹ Repealed; see, now, V.T.C.A. Government Code § 572.001 et seq.

² V.T.C.A. Election Code, § 251.001 et seq.

Historical and Statutory Notes

For saving provisions of 1975 Act see note set out under § 1.07.

The 1975 amendment rewrote the section, which formerly read:

"It is a defense to prosecution under Section 36.07 (Compensation for Past Official Behavior), 36.08 (Gift to Public Servant), or 36.09 (Offering Gift to Public Servant) of this code that the benefit involved was:

"(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled;

"(2) a gift or other benefit conferred on account of kinship or a personal, professional,

or business relationship independent of the official status of the recipient;

"(3) a trivial benefit incidental to personal, professional, or business contacts that involves no substantial risk of undermining official impartiality; or

"(4) a contribution made under the election laws for the political campaign of an elective public servant when he is a candidate for nomination or election to public office."

The 1981 amendment in par. (3)(C) added "exclusive of reimbursement for travel, food, and lodging expenses incurred by the recipient in performance of the services".

BRIEF Ch. 3

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BRIBERY & CORRUPT INFLUENCE

Ch. 36

§ 36.10

The 1983 amendment in the introductory language deleted "36.07 (Compensation for Past Official Behavior)," preceding "36.08 (Gift to Public Servant)" and deleted par. (E) which formerly read:

"The benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;"

and, in subd. (5), in the introductory language, deleted "financial" preceding "statement under Chapter", and inserted "or Section 243, Texas Election Code (Article 14.07, Vernon's Texas Election Code)," and, in par. (A), substituted "\$50" for "\$20" and deleted "financial" preceding "statement; and".

For applicability of change in law made by 1983 amendatory act to offenses committed before effective date of Act, see note under § 36.01.

The 1987 amendment, in subd. (3), deleted the former provision under par. (C) which provided:

"the value of the honorarium does not exceed \$250 exclusive of reimbursement for travel, food, and lodging expenses incurred by the recipient in performance of the services,"

redesignated former par. (D) as par. (C); and in par. (C) inserted "and expenses".

The 1991 amendment rewrote the section, which previously read:

"(a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) of this code do not apply to:

"(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

"(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient; or

"(3) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

"(A) not more than one honorarium is received from the same person in a calendar year;

"(B) not more than one honorarium is received for the same service; and

"(C) the honorarium and expenses, regardless of amount, are reported in the financial statement filed under Chapter 421, Acts of the 63rd Legislature, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), if the recipient is required to file a financial statement under that Act;

"(4) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest and reported as required by law; or

"(5) a benefit to a public servant required to file a statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), or Section 243, Texas Election Code (Article 14.07, Vernon's Texas Election Code), that is derived from a function in honor or appreciation of the recipient if:

"(A) the benefit and the source of any benefit in excess of \$50 is reported in the statement; and

"(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

"(6) Subsection (5) of Section 36.10 of this Act does not apply to those public servants designated in Section 36.08(f) of this Act 30 days prior to or during a regular session of the Texas Legislature."

For effective date and application of the 1991 act, see notes following § 36.01.

The 1993 amendment, throughout the section, following references to other sections of the Penal Code, deleted "of this code"; and in subsec. (a), added subds. (6) and (7).

Cross References

"Benefit" defined, see V.T.C.A. Penal Code, § 1.07.

Campaign contributions, see V.T.C.A. Election Code, § 251.001 et seq.

Defense explained, see V.T.C.A. Penal Code, § 2.03.

"Law" defined, see V.T.C.A. Penal Code, § 1.07.

"Public servant" defined, see V.T.C.A. Penal Code, § 1.07.

Library References

Officers and Public Employees §§ 121, 122.
WESTLAW Topic No. 283.

C.J.S. Officers and Public Employees §§ 255 to 263.

§ 36.10

PUBLIC ADMINISTRATION

Title 8

Notes of Decisions

In general 1
Employment of legislators 6
Gifts from lobbyists, generally 5
Guests 3
Honoraria 4
Persons 2

1. Construction and application

A contribution by a business corporation to a nonprofit organization conducting nonpartisan research for a legislative caucus is not necessarily prohibited by or subject to this chapter, V.A.T.S. Bus.Corp. Act, Vernon's Ann.Civ.St. art. 1349 (repealed), the Political Funds Reporting and Disclosure Act (V.A.T.S. Election Code, art. 14.01 et seq.; repealed, now V.A.T.C. § 31.035), the Lobby Act (Vernon's Ann.Civ.St. art. 6252-9c (repealed)). Op.Atty.Gen.1983, No. JM-50.

Communications to county officials are not governed by Chapter 305 of the Government Code. A county official may be required to report some gifts of food, lodging, transportation, or entertainment under § 159.005 of the Local Government Code in order to satisfy the requirements of § 36.10(b) of the Penal Code. Tex.Ethics Comm.Op. No. 106 (1992).

A subscription to a magazine may be a benefit if it is of more than minimal value. Tex.Ethics Comm.Op. No. 120 (1993).

Gifts from legislators to legislative staff members and gifts from committee chairs to committee members may be permissible under Penal Code § 36.10(a)(2) which provides an exception for gifts given on the basis of an independent relationship. Tex.Ethics Comm.Op. No. 139 (1993).

2. Persons

A state college or university is a "person" for purposes of the Penal Code. Therefore, various prohibitions in section 36.08 of the Penal Code on public servants' acceptance of benefits from any "person" apply to the acceptance of benefits from state colleges and universities. Generally, tickets to intercollegiate athletic events are benefits. For a state college or university to satisfy the "guest" exceptions in section 36.10 in regard to athletic events, an individual officer or employee must have some direct contact with the legislator, and the guest and host must be in reasonable physical proximity and have easy access to each other during the game. Tex.Ethics Comm.Op. No. 69 (1992).

A city is a "person" for purposes of the Penal Code. Therefore, a legislator may not accept a "benefit" from a city unless one of the exceptions set out in section 36.10 of the code is

applicable. Tex.Ethics Comm.Op. No. 75 (1992).

3. Guests

For a corporation to satisfy the "guest" requirement under § 36.10 of the Penal Code there must be a person present whose position, authority, or conduct could create corporate liability for exemplary damages. Tex.Ethics Comm.Op. No. 90 (1992).

Texas Wing, Civil Air Patrol, may provide lodging to members of the executive branch only if the expenditures are not lobby expenditures and only if the requirements of the "guest" exception in § 36.10 of the Penal Code are met. Texas Wing may provide a banquet to members of the executive and legislative branches if the requirements of the guest exception are met and if the requirements of the lobby statute, if applicable, are met. Tex.Ethics Comm.Op. No. 94 (1992).

4. Honoraria

A legislator may not accept an engraved clock in appreciation for a speech, even if the donor is required to report the gift under the lobby statute, if the legislator would not have been asked to give the speech but for his official position. Tex.Ethics Comm.Op. No. 97 (1992).

As long as a state legislature is providing services to a city in a capacity other than as a legislator and as long as the prohibition on honoraria is not applicable, a state legislator may accept a salary for working for city. Whether funds come from a public or private source is irrelevant to the application of the honorarium provision. Under the prohibition on honoraria a legislator could not accept a fee for teaching if the legislator would not have been asked to speak but for his position as a legislator, regardless of whether payment comes from a public or private source. Tex.Ethics Comm.Op. No. 148 (1993).

5. Gifts from lobbyists, generally

Subject to certain monetary limitations and reporting requirements, a lobbyist may provide, and a legislator may accept, food in connection with a hunting trip and a place to hunt if the person providing the food and entertainment is present. Tex.Ethics Comm.Op. No. 12 (1992).

A registered lobbyist is not prohibited from giving free books to legislators, but a registrant is prohibited from giving, and a legislator from accepting an expenditure or series of expenditures for gifts that in the aggregate exceed \$500 in a calendar year. The lobbyist must report any such gift and should report the greater of the fair market value of the books or the actual cost of developing, writing, producing, and dis-

BRIBERY & CORRUPT INFLUENCE

Ch. 36

§ 36.10

Note 6

tributing the books. A registered lobbyist is not prohibited from selling legislators books for the actual cost of writing, developing, publishing, and distributing the books since such a sale is not a "gift" and would not have to be reported under the lobby statute. Tex.Ethics Comm.Op. No. 67 (1992).

A registered lobbyist must report a lobby expenditure in the form of a work of art for a legislator as a "gift" under Chapter 305 of the

Government Code. Tex.Ethics Comm.Op. No. 87 (1992).

6. Employment of legislators

Neither chapter 36 of the Penal Code nor article 6252-9b, section 8, prohibits a legislator from accepting employment from a special district. Tex.Ethics Comm.Op. No. 41 (1992).

A legislator may not accept payment from a city for lobbying the state legislature. Tex.Ethics Comm.Op. No. 123 (1993).

OFFENSES AGAINST PUBLIC ADMINISTRATION

Title 8

§ 36.08
Note 2

11. Sufficiency of evidence

Evidence, that cellmate told law enforcement officials during their investigation of damage to skylight in jail cell that defendant had caused damage and that cellmate had been removed from general jail population for his protection after he provided information, was sufficient to show that cellmate was prospective witness within meaning

of statute making it offense to threaten harm to another in retaliation for service of another as prospective witness, and to support defendant's conviction on charge of retaliation, even though no criminal complaint based on damage to skylight had actually been filed. *Morrow v. State* (App. 12 Dist. 1990) 862 S.W.2d 616, review granted, affirmed 862 S.W.2d 612, rehearing on petition for discretionary review denied, rehearing denied.

§ 36.07. Acceptance of Honorarium

United States Supreme Court

Free speech, public employees, prohibition on receipt of honoraria, see *U.S. v. National Treasury*

Employees Union, 1995, 115 S.Ct. 1003, 130 L.Ed.2d 964.

Notes of Decisions

Construction and application Outside employment 5

1. Construction and application

There is no general prohibition against a legislator serving on the board of a private entity. The legislator should be aware, however, of the restrictions in Chapter 36 of the Penal Code and in Chapter 572 of the Government Code. *Tex.Ethics Comm.Op. No. 228* (1994).

1. Services

Whether a member of the legislature may accept a speaking fee depends on the motivation of the person requesting that the legislator speak. Although the permissibility of any particular fee must be determined on a case-by-case basis, the fact that a legislator receives fees for speaking before becoming a member of the legislature is strong evidence that the legislator is a desirable speaker for reasons other than his status as a

member of the legislature. *Tex.Ethics Comm.Op. No. 273*(1995).

2. Honorarium

A cash award in recognition of contributions for improvements in the justice system to a police officer from a national foundation was not a prohibited honorarium under Penal Code § 36.07, nor was it a prohibited benefit under Penal Code § 36.08(a). *Tex.Ethics Comm.Op. No. 226* (1994).

4. Transportation, meals, and lodging

A legislator may accept expenses for travel, lodging, and meals in connection with a speaking engagement even if the honorarium provision prohibits the acceptance of a fee for the speaking engagement. *Tex.Ethics Comm.Op. No. 273*(1995).

5. Outside employment

In addition to agency policy and laws applicable to specific agencies, Penal Code §§ 36.07 and 37.08 and Chapter 572 of the Government Code may restrict outside employment by state employees. *Tex.Ethics Comm.Op. No. 192* (1994).

§ 36.08. Gift to Public Servant by Person Subject to his Jurisdiction

Notes of Decisions

Outside employment 9 Public servant or individual 10 Recipient of benefit 2.5 Regulation by public servant 8.5

1. Construction with other laws

The gift prohibitions in Penal Code § 36.08 are applicable to gifts from cities and counties. Those prohibitions do not apply to gifts routinely given to residents of the city or county by a community group such as a chamber of commerce. *Tex.Ethics Comm.Op. No. 187* (1994).

2. Benefits

Payment to a state representative personally in the amount of the cost of an airline ticket paid for

out of personal funds would be a prohibited benefit. *Tex.Ethics Comm.Op. No. 80* (1992).

After September 1, 1994, a city's provision of free parking for legislators on any property or any facility "owned, leased, or operated" by the city will not be prohibited by Penal Code § 36.08(f). The legislators are not required to report a city's provision of free parking on a personal finance statement filed under Chapter 572 of the Government Code. *Tex.Ethics Comm.Op. No. 186* (1994).

A cash award in recognition of contributions for improvements in the justice system to a police officer from a national foundation was not a prohibited honorarium under Penal Code § 36.07, nor was it a prohibited benefit under Penal Code § 36.08(a). *Tex.Ethics Comm.Op. No. 226* (1994).

Neither Chapter 36 of the Penal Code nor Chapter 305 of the Government Code prohibits a mem-

§ 36.08

Note 2

ber of the legislature from accepting free use of office space from a county. Tex.Ethics Comm.Op. No. 235 (1994).

Waiver of a membership fee to a private club is a "benefit" purposes of Chapter 36 of the Penal Code. Generally, a candidate or officeholder could accept an offer to use the facilities of a private club for campaign or officeholder purposes. Such a contribution would not be permissible, however, if the club were incorporated. If a candidate or officeholder accepted the opportunity to use the facilities of a private club as a campaign contribution or an officeholder contribution, the candidate or officeholder could not use the facilities for personal purposes unrelated to his or her candidacy or to his or her duties or activities of office. Tex.Ethics Comm.Op. No. 268 (1995).

2.5. Recipient of benefit

The prohibitions in Penal Code § 36.08(f) do not apply to a benefit accepted by a legislator's spouse.

§ 36.10. Non-Applicable

(a) Sections 36.08 (Gift to Public Servant) and 36.09 (Offering Gift to Public Servant) do not apply to:

[See main volume for (1) and (2)]

(3) a benefit to a public servant required to file a statement under Chapter 572, Government Code, or a report under Title 15, Election Code,¹ that is derived from a function in honor or appreciation of the recipient if:

[See main volume for (A) and (B); (4) to (7); (b) and (c)]

Amended by Acts 1995, 74th Leg., ch. 76, § 5.95(38), eff. Sept. 1, 1995.

¹ V.T.C.A., Election Code § 251.001 et seq.

Historical and Statutory Notes

1995 Legislation

The 1995 amendment, in subsec. (a)(3), updated a statutory reference.

Notes of Decisions

Food, lodging, transportation or entertainment 5.5

Loans 8

Relationship independent of official status 2.5

Use of government property 7

2.5. Relationship independent of official status

Nothing in Title 15 of the Election Code prohibits the use of political contributions to supplement the salaries of state employees. A salary supplement paid by a legislator to state employees who work for the officeholder is permissible under Penal Code § 36.10(a)(2). Tex.Ethics Comm.Op. No. 254 (1995).

5.5. Food, lodging, transportation or entertainment

County officials may accept transportation and lodging necessary for attendance at a vendor's

The issue of who accepts a benefit is a fact question. Tex.Ethics Comm.Op. No. 252 (1995).

8.5. Regulation by public servant

A member of the Board of Vocational Nurse Examiners should not offer continuing education courses for profit for vocational nurses seeking license renewal. Tex.Ethics Comm.Op. No. 257 (1995).

9. Outside employment

In addition to agency policy and laws applicable to specific agencies, Penal Code §§ 36.07 and 37.08 and Chapter 572 of the Government Code may restrict outside employment by state employees. Tex.Ethics Comm.Op. No. 192 (1994).

10. Public servant or individual

The laws subject to interpretation by the Texas Ethics Commission apply to gifts to individuals, not gifts to governmental bodies. Tex.Ethics Comm.Op. No. 214 (1994).

OFFENSES AGAINST PUBLIC ADMINISTRATION

Title 8

OFFENSES

Title 8

office space from No. 235 (1994).

8. Loans

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§ 37.01. De

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