Texas Ethics Advisory Opinions

Conduct of state elected and appointed officials and employees is governed by State of Texas ethics provisions (codified in *Government Code, Chapter* 572) and may be categorized into four areas: 1) Employee standards of conduct; 2) Benefits, gifts and honoraria; 3) Political activities; and 4) Use of state authority/state property. The following are summaries of selected *Ethics Advisory Opinions (EAO's)* issued by the Texas Ethics Commission, pertinent to these four areas, from 1992 to the present.

I. Employee Standards of Conduct

EAO No. 470 (2006) – A former attorney for a regulatory agency could receive compensation for representing a client in a proceeding before the agency as long as, while in state service, she: a) was not directly involved in the matter; or, b) had no official (supervisory) responsibility over the matter.

EAO No. 440 (2001) -- The Ethics Commission has no authority to issue an opinion about the legal effect of a private real estate transaction.

EAO No. 425 (2000)—The term "public servant" includes an individual who has been selected as a state employee, even if the individual has not yet assumed his or her duties.

EAO No. 438 (2001)— If two state regulatory agencies work together on a particular project, one agency's decisions in regard to the project constitute a separate matter from the other agency's decisions in regard to the project for purposes of the revolving door prohibition in section 572.054(b) of the Government Code.

EAO No. 426 (2000)—All tasks that are part of a regulatory agency's involvement in negotiating or executing a book endorsement contract are part of the "matter" of the book endorsement. If a former state employee had offered advice or analysis in connection with the matter of the endorsement, he or she could not receive compensation for writing any part of the material that would be the subject of the contemplated endorsement.

EAO No. 397 (1998)--Separate contracts are separate "matters" for purposes of the revolving door provision in Government Code section 572.054(b). The conclusion that a specific work activity constitutes "participation in" one matter, however, does not necessarily preclude the conclusion that the same work also constitutes "participation in" another matter.

EAO No. 285 (1995)--The revolving door law restricts certain former state officers and employees from receiving compensation in connection with any matter over which the former officer or employee had authority, even if the former officer or employee was not aware that his subordinates were working on the matter.

EAO No. 246 (1995)--The revolving door provisions of section 572.054 of the Government Code do not prohibit a former member of the State Board of Education from representing a textbook publisher in a matter to be decided by a local school board.

EAO No. 353 (1996)--Section 572.054(b) of the Government Code does not prohibit a former agency employee who worked on some specific purchasing decisions for an agency from performing work for a vendor in connection with other purchasing decisions by the agency.

EAO No. 361 (1997)--Chapter 572 of the Government Code does not place an obligation on a state agency to provide a former employee with a list of matters in which the former employee participated.

EAO No. 365 (1997)--A former employee of the Department of Transportation, who participated in the matter of the acquisition of a specific piece of property, may not represent a private business entity or receive compensation from a private business entity for services in regard to the department's acquisition of the same piece of property.

EAO No. 167 (1993)—A former state officer or employee of a regulatory agency covered by Government Code section 572.054(b) commits an offense if the former officer or employee represents any person or receives any compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility. An agency may refuse to deal with a former officer or employee who attempts to represent an individual in violation of the statute, consistent with the due process rights of the individuals concerned. Nothing in the statutes that the Texas Ethics Commission is authorized to interpret directly provides that a state officer or employee commits an offense by permitting a prohibited representation to take place, or that a person commits an offense by allowing himself to be represented in violation of the statute, though section 7.02 of the Penal Code provides for criminal responsibility for the conduct of another under certain circumstances.

EAO No. 192 (1994)—In addition to agency policy and laws applicable to specific agencies, sections 36.07 and 36.08 of the Penal Code and chapter 572 of the Government Code may restrict outside employment by state employees.

EAO No. 197 (1994)--A former state agency employee subject to section 572.054(b) of the Government Code may represent a person before his former agency so long as he does not work on a matter in which he participated or for which he had responsibility as a state employee. Further, a former employee may work on matters that are similar to matters he worked on as a state employee, and he may work for a person or entity that he dealt with as a state employee, as long as he does not work on a matter he worked on as a state employee or a matter over which he had responsibility as a state employee.

II. Benefits, Gifts and Honoraria

EAO No. 460 (2005)—A public school board member, who refused a free pass to school district events, may not seek reimbursement for tickets to such events (purchased with personal funds).

EAO No. 427 (2000)—A charitable contribution made in honor of a public servant is not a "benefit" to the public servant if the public servant does not exercise discretion over the decision to make the contribution to a particular organization.

EAO No. 305 (1996)—A public servant may accept an honorarium for performing services if the public servant's official status was not a deciding factor in the decision to request the public servant to perform those services.

EAO No. 18 (1992)--Neither section 305.024 of the Government Code nor section 36.07 of the Penal Code precludes a nonprofit organization from paying the necessary transportation, meals, and lodging expenses for a member of the legislative or executive branch to speak at a conference or similar event hosted by the organization if the member's participation is more than "merely perfunctory." If the nonprofit organization is registered under section 305.005, these expenses must be reported.

EAO No. 19 (1992)--Section 36.07(a) of the Penal Code prohibits a public servant from accepting or soliciting a fee for speaking if the public servant would not have been requested to speak but for his official position or duties. The prohibition extends to a request for or acceptance of a payment made to a third party if the speaker agrees to speak in exchange for such payment.

EAO No. 31 (1992)--Chapter 305 of the Government Code does not apply to gifts made to a state agency rather than to individual officers or employees of a state agency. Whether a particular agency has authority to accept a gift is governed by other law, over which the Ethics Commission has no interpretive authority. Expenditures for an educational program presented to employees of a state agency in their capacity as state employees would not be expenditures reportable under chapter 305 of the Government Code if the program primarily benefits the agency rather than the individual. State colleges and universities are "state agencies" for purposes of chapter 305 of the Government Code. A private company that purchases meals for employees of a state college or university is engaging in lobby activity if the company's purpose in purchasing the meals is to communicate to influence action by the college or university.

EAO No. 36 (1992)--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.

EAO No. 51 (1992)—A state employee who, at the direction of his or her employing agency, attends a seminar to acquire information relevant to his or her job is not obtaining a "benefit" for purposes of chapter 36 of the Penal Code.

EAO No. 54 (1992)--An employee of a state agency who delivers a speech and accepts lunch provided in connection with the speech is not prohibited from accepting the meal by chapter 36 of the Penal Code.

EAO No. 57 (1992)--A public servant may not accept free membership in an organization as consideration for a speech.

EAO No. 60 (1992)--Both a \$60 restaurant meal and a \$160 deer rifle are benefits. A benefit does not constitute a bribe, however, if it is not offered or accepted as consideration for some official act on the part of a public servant.

EAO No. 61 (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.

EAO No. 62 (1992)--"Benefit," for purposes of chapter 36 of the Penal Code, does not include small amounts of food that a donor delivers infrequently to a public servant at a governmental office as long as the food is unsolicited and is not offered or accepted in exchange for action or inaction on the part of a public servant. Whether food in a particular case is a benefit is a fact question. The Ethics Commission recommends that public servants exercise good judgment and caution in these matters.

EAO No. 63 (1992)--"Benefit," for purposes of chapter 36 of the Penal Code, does not include the following items as long as they are unsolicited and are not offered or accepted in exchange for any action or inaction on the part of a public servant: promotional or commemorative items such as caps, coffee mugs, tee shirts, and key rings; fresh-cut flowers given to a public servant at a public appearance; and perishable foods delivered infrequently and in small amounts to a government office or given to a public servant at a public appearance. A state employee who, at the direction of his or her employing agency, attends a seminar relevant to his or her job is not obtaining a benefit. The employee may accept tuition, food, transportation, and lodging at such a seminar only to the extent to which the state would pay for tuition, food, transportation, and lodging in connection with the seminar. In that case, the benefit would be to the state and neither chapter 36 of the Penal Code nor chapter 305 of the Government Code would apply.

EAO No. 64 (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.

EAO No. 69 (1992)--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. As a general rule, tickets to intercollegiate athletic events are benefits. For a state college or university to satisfy the "guest" exceptions in section 36.10 of the Penal Code 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.

EAO No. 93 (1992)--A registrant may provide transportation expenses for a member of the executive or legislative branch to attend "a conference or similar event in which the member renders services." However, the nature of those services must be "more than merely perfunctory." Whether a particular event or a service falls within these definitions is a fact question.

EAO No. 100 (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.

EAO No. 118 (1993)—A state employee or an employee of a local government body may accept a local ride in the circumstances described. The prohibition set out in section 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. A cup of coffee is not a benefit for purposes of chapter 36 of the Penal Code. A state agency, as opposed to an individual officer or employee of the agency, may accept a gift of food only if the agency can use the food in carrying out its powers and duties. Distribution of food to agency employees would generally not be one of an agency's powers or duties. A state agency may accept a tuition waiver and food at a seminar for a state employee if it would be permissible for the state agency to pay such expenses.

EAO No. 120 (1993)--A subscription to a magazine may be a benefit if it is of more than minimal value.

EAO No. 130 (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 a gift.

EAO No. 173 (1993)--Texas law prohibits a public servant from accepting an honorarium for services that the public servant would not have been asked to perform but for his or her official position or duties. The location of a speech, the nature of the audience, or the speaker's expertise may be factors to consider in determining whether an honorarium is a prohibited one, but if the public servant would not have been asked to speak but for his official status, a payment for speaking would be a prohibited honorarium.

III. Political Activities

EAO No. 433 (2001)—A contribution to a judge to defray expenses incurred in defending himself against charges of judicial misconduct is an "officeholder contribution" for purposes of *title 15* of the *Election Code*.

EAO No. 377 (1997)--A group that makes contributions for the use of university academic departments is not making expenditures that count toward lobby registration under Government Code section 305.003(a)(1) as long as the group does not earmark the contributions to be used for an expenditure or expenditures described in Government Code section 305.006(b).

EAO No. 122 (1993)--It is for a state university's board of regents to determine whether the activities of a student government group are activities of the university for purposes of the lobbying statute. Activities of the university are not lobbying activities for purposes of the lobbying statute.

IV. Use of Authority/State Property

EAO No. 443 (2002)—For the purpose of section 255.003, the "spending" of public funds includes the use of facilities maintained by a political subdivision. The prohibition in section 255.003 of the Election Code applies to any use of a political subdivision's resources for political advertising. This opinion does not apply to the use of the facilities of a political subdivision of a situation in which the facilities function as a public forum.

EAO No. 395 (1998)--A state employee's incidental use of state telephones to place long-distance personal calls is not a misapplication of government resources as long as the calls do not result in any charges to the state.

EAO No. 295 (1995)--An employee who used state agency work time to work on a lawsuit the employee had filed against the state would be misusing a thing of value belonging to the state.

EAO No. 372 (1997)--Penal Code section 39.02 does not require state agencies to adopt policies absolutely prohibiting any personal use of telephones or computer services as long as the state is reimbursed for any direct costs incurred. In adopting policies about the use of agency equipment, agencies should make sure that any permissible personal use does not result in direct costs paid by the state and does not impede agency functions. Agency policies should also ensure that state resources are not used for private commercial purposes and that only incidental amounts of employee time--time periods comparable to reasonable coffee breaks during the day--are used to attend to personal matters.

EAO No. 95 (1992)--A credit card issued to a public servant under a program where the card is issued at the direction and under the control of the State of Texas for state purposes may not be used for personal expenditures or any other type of expenditure not reimbursable as a state business expense under state law.

EAO No. 134 (1993)--The incidental use of state telephones by state employees to place personal local calls that do not result in additional costs or damage to the state is not a "misapplication" of state property for purposes of section 39.01(a)(2) of the Penal Code.

EAO No. 147 (1993)--A public servant's use of a state-issued credit card for any type of expense other than a state business expense is a misapplication of state property and may violate section 39.01 of the Penal Code. It is not a misapplication of state property to use a state-issued credit card for a state business expense in accordance with rules established by agencies authorized to control the card's use.

EAO No. 164 (1993)--As a general rule, a state employee would not be serving an agency purpose by searching for other employment. An individual state employee who is using state resources to search for a new job in a way that has been expressly authorized by the agency's board would not, as an individual, be misapplying state property.

EAO No. 182 (1994)—To violate section 39.01 of the Penal Code, one must both "misapply" state resources and the misapplication must be made with intent to obtain a benefit or with intent to harm another. A use of state resources for charitable fundraising in compliance with article 6813h, V.T.C.S., would not be a misapplication of such resources. Nor would a use of state resources in connection with a charitable fundraising drive involve an intent to obtain a "benefit" or an intent to "harm" another as defined by section 1.07(a) of the Penal Code.