Can I Take It?

A Guide for SBOE MEMBERS

RULE NO. 1: You May Never Take Anything As Consideration For An Official Act. The bribery law prohibits payments or gifts made in exchange for an official act. An official act includes a vote, a recommendation, or any other exercise of official discretion. Accepting a bribe is a felony of the second degree. Tex. Penal Code § 36.02(e).

RULE NO. 2: You May Not Accept An Honorarium For Services You Would Not Have Been Asked To Provide But For Your Official Status. This means, for example, that you may not accept a gift or payment for giving a speech if your official position was a reason for your being asked to give the speech. You may, however, accept meals, transportation, and lodging in connection with a speech as long as your speech is more than merely perfunctory. Also, you may accept a gift that is not a "benefit" such as a plaque or something of minimal value like a coffee cup, key chain, or "gimme" cap. The improper acceptance of an honorarium is a Class A misdemeanor.

RULE NO. 3. Prohibited solicitations. No SBOE Member shall solicit support on behalf of any political candidate, political party, or political committee from a PSF Service Provider or any PSF manager, consultant, or staff member. 19 TAC § 33.5(i). A PSF Service Provider shall not make any gift or donation to a school or other charitable interest on behalf of, at the request of, or in coordination with an SBOE Member. 19 TAC § 33.5(e)(7). The provisions of Rule No. 3 are based solely on SBOE rules. The SBOE Code of Ethics is enforced by the SBOE. 19 TAC § 33.5(o). The SBOE could vote to censure a Member or to remove a Member from a committee.

THE OTHER RULES: If acceptance of a gift or payment is permissible under Rule Nos. 1 through 3, the next step is to determine whether or not the person making the offer is a registered lobbyist or PSF Service Provider.

A. IF THE PERSON MAKING THE OFFER IS A REGISTERED LOBBYIST OR A PSF SERVICE PROVIDER:

1. You may not accept:

- Loans, cash, or negotiable instruments other than political contributions. A violation is a Class A misdemeanor. Tex. Penal Code 36.08(h).
- Travel or lodging for a pleasure trip. (Incidental transportation such as a short ride in a car or taxi is permissible.) A violation is a Class A misdemeanor. Tex. Penal Code 36.08(h).

- A political contribution that is from a person engaged in selling bonds or connected with the textbook business from making campaign contributions concerning a SBOE race. Tex. Educ. Code § 7.108. A violation is a Class B misdemeanor. Tex. Educ. Code § 7.108 (b). Attorney General Opinion M-1262 has called into question whether this provision is constitutional, but no court has addressed the issue.

2. You may accept:

- Food and beverages if the lobbyist or PSF Service Provider is with you. There is no annual limit on the value of food and beverages you may accept from a lobbyist.
- Entertainment worth up to $250 in a calendar year. (Entertainment includes, for example, sports events and concerts.) The lobbyist providing the entertainment must be present for the event.
- Gifts, other than awards and mementos, that together do not exceed $250 in value during a calendar year. [Note: "gifts" here does not include food, entertainment, transportation, or lodging.]
- Awards and mementos worth not more than $250. This is not an annual cap, but a cap on the value of each individual award or memento.
- Travel and lodging in connection with a fact-finding trip or to a seminar or conference at which you are providing services, such as speaking, and the services are more than perfunctory. Any lobbyist who is providing travel or lodging must be present at the event.
- The $250 limitations in this section are found in SBOE rule 19 TAC § 33.5(l)(2)(F). Under the Texas Government Code § 305.024, the limitations are not $50 limitations but are instead $500 limitations. If the $50 limitations were violated, the SBOE could vote to censure a Member or to remove a Member from a committee. If the $500 limitations were violated, the violation would be a Class A misdemeanor. Tex. Pen. Code § 36.08(h).

Note: You can find out if someone is a registered lobbyist by calling the disclosure filings section of the Texas Ethics Commission at (512) 463-5800 or (800) 325-8506.

Please Note: Your name will appear on a lobbyist's activities report:

- if expenditures for your food, lodging, transportation, or entertainment in a day exceed $75, which is 60 percent of the amount of the legislative per diem;
- if expenditures for a gift, award, or memento exceed $50; or
- each time an expenditure is made for you to attend political fundraisers or charity events, regardless of the amount spent.

Please Note: Your name will appear in a government document if a business transaction occurs with a PSF Service Provider as specified:

A PSF Service Provider shall disclose in writing to the commissioner of education for dissemination to all SBOE Members any business or financial transaction greater than $50 in value with an SBOE Member within 30 days of the transaction. Excluded from this subsection are checking accounts, savings accounts, credit cards, brokerage accounts, mutual funds, or other financial accounts that are provided to the SBOE Member under the same terms and conditions as they are provided to members of the general public. This reporting is required solely by SBOE rule 19 TAC § 33.5(e)(8)

B. IF THE PERSON MAKING THE OFFER IS *NOT* A REGISTERED LOBBYIST OR A PSF SERVICE PROVIDER.

The Penal Code prohibits a state officer or employee from taking any benefit from a person subject to regulation, inspection, or investigation by the state officer's or employee's agency. There are also restrictions on benefits from a person interested in or likely to become interested in a contract or other transaction with the agency. (A "benefit" is anything reasonably regarded as pecuniary gain or advantage.) There are, however, further restrictions and exceptions to these prohibitions.

You may not accept a gift or contribution if:

- The source of the gift is not identified, if depending on the source, the gift could be prohibited by law.
- There is reason to believe a potentially prohibited gift is given through an intermediary.
- A political contribution that is from a person engaged in selling bonds or connected with the textbook business from making campaign contributions concerning a SBOE race. Tex. Educ. Code § 7.108 . A violation is a Class B misdemeanor. Tex. Educ. Code § 7.108(b). Attorney General Opinion M-1262 has called into question whether this provision is constitutional, but no court has addressed the issue.

You may accept a gift, payment, or contribution as long as the gift is not prohibited above and the gift fits into *any one* of the following categories.

- <u>Items Worth Less Than $50</u>: You may accept an item with a value of less than $50. This exception does not apply to cash, checks, or negotiable instruments.
- <u>Independent Relationship</u>: There is an exception from the general prohibition on the acceptance of benefits for a gift based on

* kinship
* a personal relationship independent of your official status
* a professional relationship independent of your official status
* a business relationship independent of your official status.

- Fees For Services: You may accept a payment to which you are lawfully entitled in a capacity other than your official status. In this case you may accept the offer without restriction. Remember, you may not take an honorarium for a service that you would not have been asked to provide but for your official status.
- Political Contributions: You may in general accept a political contribution as a candidate or officeholder. However, other laws may prohibit a particular contribution.
- Government Property: You may accept an item issued by a governmental entity that allows the use of property or facilities owned, leased, or operated by the entity.
- Food, Entertainment, Transportation, & Lodging: Benefits in the form of food, lodging, transportation, or entertainment are permissible if accepted as a "guest" and reported in accordance with any applicable reporting requirement. To accept something as a guest, the donor must be present. Board members and agency heads may be required to report certain gifts on their annual personal financial statement.
- Accepting a gift that violated this section would be a Class A misdemeanor. Tex. Penal Code 36.08(h).

Donations to Charity: If an unsolicited gift is received that would violate these provisions, the gift should be returned. If the gift cannot be returned you may donate the benefit to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes. However, this does not allow for the circumvention of the prohibition of PSF service providers from making gifts to schools or other charitable interests on behalf of, at the request of, or in coordination with an SBOE Member.

NOTICES

This guide was prepared as a quick overview, not as a substitute for reference to the law or to advisory opinions issued by the Ethics Commission concerning acceptance of gifts by public servants. Questions about the SBOE ethics rules can be addressed to Christopher Maska, TEA Ethics Advisor, (512) 463-9960. Questions about the ethics statutes can be addressed to the Texas Ethics Commission (800) 325-8506 or to Christopher Maska.