

January 2007

Legal Q&A

By Lauren Ford Crawford

TML Legal Counsel

How is “bribery” defined under state law?

Under Texas Penal Code Section 36.02(a), a public official or public employee commits the crime of bribery when he/she accepts, agrees to accept, or solicits any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of discretion. A “benefit” is anything reasonably regarded as economic gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested (such as a relative or business partner). TEX. PENAL CODE § 1.07. Whether an item is regarded as an “economic gain or advantage” must be determined by a local prosecutor on an individual basis. For example, a gift basket, a gift certificate, or complimentary or discounted services or products would likely be prohibited as an illegal gift or benefit. A coffee cup, trinket, or plaque might not be, so long as they are of nominal value.

What is the punishment for bribery?

Accepting, agreeing to accept, or soliciting any benefit as consideration for a decision, opinion, recommendation, vote, or other exercise of official discretion is a second degree felony, punishable by two to twenty years of imprisonment and a fine of up to \$10,000. TEX. PENAL CODE §§ 36.02(e); 12.33.

What if the gift or benefit was unsolicited, did not influence an official decision, and was just a “thank you” for a job well done?

Even in those circumstances, a gift may be considered bribery of a public official or employee. The fact that an item was not solicited and had no influence over a decision does not bar a gift or benefit from being considered bribery. In fact, public officials and employees are generally prohibited from accepting gifts from any person subject to their jurisdiction, whether or not the gift is related to a specific official action. TEX. PENAL CODE § 36.08. The acceptance by a public official or employee of a gift or benefit unrelated to a specific official action offered by a person under the official’s or employee’s jurisdiction, with some exceptions, is a class A misdemeanor, punishable by a fine of up to \$4,000 and/or jail time of up to one year. TEX. PENAL CODE §§ 36.08(h); 12.21. The fact that a benefit or gift was not offered until after the exercise of official discretion is not considered a defense to a prosecution for bribery. TEX. PENAL CODE § 36.02(c).

Are there any gifts a city official or employee may accept?

Texas Penal Code Section 36.10 carves out exceptions under which a city official or employee may accept certain gifts or benefits that are not given in exchange for any exercise of official discretion. The exceptions for local public servants include: (1) an item with a value of less than \$50 (excluding cash or a negotiable instrument, such as a check); (2) a gift given by a person with whom the official or employee has a familial, personal, business, or professional

relationship, independent of the official or employee's status or work; (3) any benefit that the official or employee is entitled to receive by law or for which the person has performed a duty independent of the person's status as a public service (for example, a jury duty fee); or (4) any political contributions as defined by Title 15 of the Texas Election Code (TEX. ELEC. CODE § 251.001 *et seq.*).

Is there an exception for food and entertainment?

A city official or employee may accept, as a guest, an unsolicited gift or benefit of food, lodging, transportation, or entertainment, so long as the gift is not related to a specific official action. TEX. PENAL CODE § 36.10(b). If the city official or employee is required by state law to report such a gift, it must be done in accordance with the law for the exception to apply. *Id.*

What if I receive an unsolicited gift that I may not legally accept?

If a city official or employee receives an unsolicited benefit that the official/employee is prohibited from accepting under Texas Penal Code Section 36.08, the benefit may be donated to a governmental entity that has the authority to accept the gift or to a recognized tax-exempt charitable organization formed for educational, religious, or scientific purposes. TEX. PENAL CODE § 36.08(i).

May I accept a small gift or payment for speaking at an event in my capacity as a city official or employee?

A city official or employee may not solicit, accept, or agree to accept a gift or payment (known as an "honorarium") in return for services that would not have been requested but for the official's/employee's position or duties, irrespective of where the speech is given or who attends the speech. TEX. PENAL CODE § 36.07(a); Texas Ethics Advisory Opinion No. 173 (1993). To do so is a class A misdemeanor punishable by a fine of up to \$4,000 and/or jail time of up to one year. TEX. PENAL CODE §§ 36.07(c), 12.21. A city official or employee may accept meals, transportation expenses, and lodging expenses connected with a speaking engagement at a conference or similar event, to the extent that the involvement in the event is more than merely "perfunctory." *Id.* at § 36.07(b).

If a city official or city employee is found to have accepted an illegal gift, benefit, or honorarium, can that person be removed from office?

While a criminal conviction of the gift or honorarium laws in the Texas Penal Code may affect an official's eligibility for office, there are no specific provisions in the Texas Penal Code providing for removal of a public official or employee due to a conviction under the gift laws. However, such a conviction may be grounds for removal under the "official misconduct" provisions of Texas Local Government Code Sections 21.025(a)(2) and 21.031(a) or through a recall or other removal action authorized by a city charter.

For a more in-depth discussion of gifts and honoraria, please see the Texas attorney general's *Texas Ethics, Gift & Honorarium Laws Made Easy* handbook. The handbook is available at http://www.oag.state.tx.us/AG_Publications/pdfs/2006ethics_easy.pdf.