

SUBJECT: Charitable contribution solicitation and recommendation by state officers

COMMITTEE: Elections — committee substitute recommended

VOTE: 6 ayes — Denny, Bohac, Anchia, Anderson, Hughes, T. Smith

0 nays

1 absent — J. Jones

WITNESSES: For — Jack Gullahorn, Professional Advocacy Association of Texas

Against — None

On — Sarah Woelk, Ethics Commission

BACKGROUND: Penal Code, ch. 36, prohibits a public servant, including a legislator, from soliciting, accepting, or agreeing to accept a benefit from any source and provides exemptions. A person may not offer or confer a benefit to a public servant that the person offering the benefit knows the public servant is prohibited by law from accepting. A benefit is defined as anything reasonably regarded as pecuniary gain or advantage and includes benefits to people in whose welfare the beneficiary has a direct and substantial interest.

Election Code, Title 15, defines and regulates political contributions and campaign expenditures, while Government Code, ch. 305, restricts expenditures a lobbyist may "confer to" an officer or employee of the legislative or executive branch of state government.

A March 2000 Ethics Commission advisory opinion (Tex. Ethic Comm. Op. No. 427) said that whether a charitable contribution made in honor of a public servant constitutes a "benefit" to that public servant turns on whether the public servant has discretion over the decision to contribute to a particular organization. The opinion said a public servant may encourage others to make contributions directly to a charitable organization but may not exercise control over who is the recipient of someone else's money.

Government Code, subch. C, which regulates standards of conduct and outlines conflict-of-interest provisions for state officers and employees and for legislators, stipulates that a violation of the subsection is a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

DIGEST:

CSHB 762 would amend Government Code, ch. 572 to authorize state officers or state employees to solicit or recommend contributions to 501(c)(3) charitable organizations or governmental entities. It would stipulate that a solicited or recommended contribution, whether monetary or not, would not constitute a political contribution or expenditure on behalf of the public servant under Election Code, Title 15, a lobby expenditure under Government Code, ch. 305, or a benefit to the public servant under Penal Code, ch. 36.

Any monetary contribution would have to be by check, money order, or a similar instrument made payable directly to the organization or entity by the donor. If the solicited or recommended contribution were not monetary, it would have to be delivered directly to the organization by the donor.

State employees could designate charities through the state employee charitable campaign and have contributions deducted from their paychecks.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

CSHB 762 would provide much-needed clarity by specifying that requests made by state officials to support certain charities or recommendations of specific charities to receive contributions would not violate the gift provisions of the Penal Code or lobby regulations nor would they constitute illegal campaign contributions.

A great deal of uncertainty surrounds what constitutes a benefit and how the ethics regulations apply to state officials who want to recommend or solicit contributions for charitable organizations in their communities. State officials often are asked to help charities raise funds, and they see this as a valuable service to their communities. The ambiguity surrounding what is permissible and what is not should be clarified with a bright line so that officials know what they are permitted to do.

In the March 2000 Ethics Commission advisory opinion (No. 427), the commission said that allowing a public servant to name or approve the

recipient of a charitable contribution amounted to something of value for the public servant. They indicated that a public servant with the power to approve the recipient of a charitable contribution had the equivalent of a "gift certificate."

Current law clearly allows charitable suggestions because simply asking someone to contribute is permissible. The law is less clear if an official chooses where the contribution goes, and this should be clarified. Many officials and lobbyists have interpreted the advisory opinion to mean that recommending, for example, which school district would be a good choice for a donation of used computers, or sponsoring an event in which a donation to a local charity is requested, would be an illegal honorarium or gift.

Officials should not have to request an opinion from the Ethics Commission every time they want to get involved in charitable events or support particular projects. Opinions are based on case-by-case evaluations and are limited to the facts of each case. Established guidelines would end the frustration many officials feel when deciding when or how to become involved in programs such as legislative intern or scholarship programs.

OPPONENTS
SAY:

CSHB 762 is not necessary because ethics regulations are clear about what constitutes a gift and a benefit. If officials have doubts about planning events during which charitable donations will be solicited, they can request advisory opinions from the Ethics Commission. If the commission says an event is permissible, it would be a defense to any claim that it is otherwise. The bill would weaken ethics laws because it would completely deregulate this type of solicitation.

Charitable organizations are prohibited from electioneering but can lobby to a limited degree. To close any potential loophole that would open the door to illegal advocacy, the bill at least should prohibit solicited contributions from being used by the organization for lobbying.

OTHER
OPPONENTS
SAY:

CSHB 762 is a good first step toward clarifying confusing regulations, but it does not adequately address the problem. In addition to authorizing state officials to *solicit* or *recommend* charitable contributions, it also should permit state officials to direct to what organization or entity the contribution would go, so that exercising control over who the recipient is would not be a violation of ethics or criminal laws.

NOTES:

The substitute differs from the original bill by specifying that in addition to solicited contributions, recommended contributions would be permitted. The substitute also clarified that in addition to charities, governmental entities could receive contributions, and that contributions would not be considered lobby expenditures. It also added that payroll deduction contributions from state employee paychecks would be allowed.