



1.800.223.8778  
[www.trs.texas.gov](http://www.trs.texas.gov)

P.O. Box 149676  
Austin, TX 78714-0185

**Heather Traeger**  
*General Counsel & CCO*

## MEMORANDUM

**To:** Contractors Doing Business with the Teacher Retirement System of Texas and Subject to the Code of Ethics for Contractors

**From:** Brian K. Guthrie, Executive Director

**Re:** TRS Code of Ethics for Contractors and Certain State Laws

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As a provider of important services to Teacher Retirement System of Texas ("TRS"), you and your representatives are subject to the provisions of state laws and the Code of Ethics for Contractors (the "Code"). Attachment A provides more details regarding your responsibilities for compliance with selected state law provisions and the Code.

Our relationship with your company is important to TRS. The basis of the relationship is totally determined by our view of the economic value that the relationship may bring to the execution of TRS responsibilities. We are, accordingly, intent on avoiding any situations that could jeopardize our ability to consider your company for continuing services. We ask that you ensure that those in your company both understand and abide by state laws and the provisions of the Code.

Gifts, travel and entertainment can be especially vulnerable areas for ethical infractions. Individual gifts and payment for entertainment should be avoided. Section 2 of the TRS Trustee Ethics Policy and Section VII of the TRS Employee Ethics Policy both contain important provisions and restrictions on gifts and benefits that TRS trustees and employees may accept. We encourage you to familiarize yourself with these important sections of TRS' ethics policies.

Thank you for the value that you bring to the effective functioning of TRS. Your attention and adherence to the provisions of state law and our Code are appreciated.

## ATTACHMENT A

Please find attached hereto copies of the following Texas state laws:

- (1) Section 36.08 of the Texas Penal Code.
- (2) Section 36.09 of the Texas Penal Code.
- (3) Section 36.10 of the Texas Penal Code.

Please be advised that the above is by no means a complete listing of all state laws that may be applicable to the offering or acceptance of gifts or other economic benefits, including travel or entertainment.

### **Texas Penal Code §36.08**

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

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

#### **Texas Penal Code §36.09**

Sec. 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, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

#### **Texas Penal Code §36.10**

Sec. 36.10. NON-APPLICABLE.

Sec. 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;

(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, 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;

(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;

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

(8) transportation, lodging, and meals described by Section [36.07\(b\)](#); or

(9) complimentary legal advice or legal services relating to a will, power of attorney, advance directive, or other estate planning document rendered:

(A) to a public servant who is a first responder; and

(B) through a program or clinic that is:

(i) operated by a local bar association or the State Bar of Texas; and

(ii) approved by the head of the agency employing the public servant, if the public servant is employed by an agency.

(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.

(d) Section [36.08](#) (Gift to Public Servant) does not apply to a gratuity accepted and reported in accordance with Section [11.0262](#), Parks and Wildlife Code. Section [36.09](#) (Offering Gift to Public Servant) does not apply to a gratuity that is offered in accordance with Section [11.0262](#), Parks and Wildlife Code.

(e) In this section, "first responder" means:

(1) a peace officer whose duties include responding rapidly to an emergency;

(2) fire protection personnel, as that term is defined by Section [419.021](#), Government Code;

(3) a volunteer firefighter who performs firefighting duties on behalf of a political subdivision and who is not serving as a member of the Texas Legislature or holding a statewide elected office;

(4) an ambulance driver; or

(5) an individual certified as emergency medical services personnel by the Department of State Health Services.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1975, 64th Leg., p. 915, ch. 342, Sec. 11, eff. Sept. 1, 1975; Acts 1981, 67th Leg., p. 2707, ch. 738, Sec. 1, eff. Jan. 1, 1982; Acts 1983, 68th Leg., p. 3240, ch. 558, Sec. 6, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 472, Sec. 60, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 304, Sec. 4.05, eff. Jan. 1, 1992; Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(38), eff. Sept. 1, 1995.

Amended by:

Acts 2005, 79th Leg., Ch. 639 (H.B. [2685](#)), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 56 (S.B. [1269](#)), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 1149 (S.B. [148](#)), Sec. 1, eff. September 1, 2013.