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ETHICS ADVISORY OPINION NO. \_\_\_\_

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September 22, 2006

*Whether the description of a gift of cash of over \$250 is required to include the value of the gift. (AOR - 535)*

The Texas Ethics Commission has been asked to consider whether the description of a cash or cash equivalent gift of over \$250 that is reportable under section 572.023(b)(7) of the Government Code is required to include the value of the gift or merely report the method of conveyance of the gift, for example, an "envelope" or "pieces of paper."

A state officer is required to file a personal financial disclosure statement each year. Gov't Code §§ 572.021, .026. In the disclosure statement a state officer must provide:

The identification of a person or other organization from which the individual or the individual's spouse or dependent children received a gift of anything of value in excess of \$250 and a description of each gift.

Gov't Code § 572.023(b)(7).<sup>1</sup> The question here is whether the description of a gift of cash of over \$250 is required to include the value of the gift.

The term "description" is not defined in chapter 572 of the Government Code, nor is it defined anywhere else in the Government Code. Additionally, we are not aware of a

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<sup>1</sup> There are exceptions to the reporting requirement for gifts from certain relatives, political contributions reported as required by the Election Code, and lobby expenditures required to be reported under the lobby law. Gov't Code § 572.023(b)(7)(A),(B),(C). Apparently, none of those exceptions would apply in this instance.

Texas statute defining the term nor are we aware of case law considering the specific issue raised in this request.<sup>2</sup>

In construing section 572.023(b)(7) of the Government Code, we are obligated to follow the rules of statutory construction. One of the principal rules of statutory construction is that legislative intent may be determined as discerned primarily from the plain meaning of the words used in the statute.<sup>3</sup> We may look beyond the literal text of the statute only where the language of the statute is ambiguous or would lead to absurd results the legislature could not possibly have intended.<sup>4</sup> Additionally, Texas courts avoid "under the guise of statutory construction, amend[ing] a statute by adding words to it, no matter how desirable such additions might seem."<sup>5</sup>

In our opinion, the legislative intent of section 572.023(b)(7) of the Government Code may be discerned from the plain meaning of the words used in the statute by considering the specific words at issue in the context of the entire section, not in isolation.<sup>6</sup> Section 572.023(b) lists 14 types of financial activity required to be reported on the personal financial statement, including gifts. The disclosure requirements for 10 of those matters include a value either by requiring a specific amount or range, or

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<sup>2</sup> We found no case that specifically addresses the plain meaning of "description." The term has been discussed by Texas Courts in different contexts. In well-established case law regarding real property, for example, Texas Courts make a distinction between a description of an asset and its value. See *Krueger v. W. K. Ewing Co.*, 139 S.W.2d 836 (Tex.Civ.App. —El Paso 1940, no writ); *Wilson v. Fisher*, 144 Tex. 53, 188 S.W.2d 150 (1945); *Butler v. Benefield*, 589 S.W.2d 778 (Tex. App.—Dallas 1979).

<sup>3</sup> See *In re Doe*, 19 S.W.3d 249, 255 (Tex. 2000); *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865–66 (Tex. 1999) (court construes a statute by looking to the plain meaning of the statute's language).

<sup>4</sup> See *Boykin v. State*, 818 S.W.2d 782, 785–86 (Tex.Crim.App.—1991).

<sup>5</sup> *In the Interest of S.H.A.*, 728 S.W.2d 73, 83 (Tex.App.—Dallas 1987, writ ref'd n.r.e.); see also *Goldman v. Torres*, 341 S.W.2d 154, 158 (Tex. 1960) (stating that reading language into a statute usurps the legislature's power).

<sup>6</sup> Nothing in the over 50 hours of audio tapes of legislative hearings and floor debate regarding this law clearly specifies that the disclosure requirement under section 572.023(b)(7) of the Government Code should or should not include the value of a gift.

“category of amount.”<sup>7</sup> Gov’t. § 572.023(b). In fact, the specific amount is required when disclosing transportation, meals, or lodging. *Id.* Furthermore, the section requiring disclosure of certain assets and liabilities makes a distinction between a “description” of an asset or liability and its “value” by specifically requiring the “identification by description and the category of the amount of the asset or liability.” *Id.* In contrast to these sections that specifically require both a description and a value or amount, the section requiring the disclosure of a “gift” does not state that the gift must be reported in a specific amount or range, or “category of amount.” *Id.* We note also that the legislature has passed many laws specifically requiring that the value be included as part of the disclosure.<sup>8</sup> However, the legislature did not include such language in section 572.023(b)(7) of the Government Code. We must presume that words relating to value, amounts, and categories of amounts were excluded from section 572.023(b)(7) for a purpose.<sup>9</sup>

Furthermore, the statute in question has been in its current form since 1991. In 1999, we issued an advisory opinion in which we stated that the description of a gift is not required to include the specific value of the gift.<sup>10</sup> Since the adoption of the advisory opinion, the legislature has amended section 572.023(b) of the Government Code but has not changed the language at issue to explicitly overrule the commission’s consistent and long-standing interpretation that the description of a gift is not required to include the value of the gift.

In our opinion, in light of those considerations, the legislative intent as discerned from the plain reading of the words in the statute is that the description of a gift is not

<sup>7</sup> The “category of amount” is set by statute at less than \$500, at least \$5,000 but less than \$10,000, at least \$10,000 but less than \$25,000, or \$25,000 or more. Gov’t Code § 572.022.

<sup>8</sup> For example, in section 254.031 of the Election Code, the disclosure requirements for political contributions, political expenditures, and loans include reporting an exact dollar amount. Similarly, in sections 305.006 and 305.0061 of the Government Code, the disclosure requirements for certain expenditures made by lobbyists include reporting an exact dollar amount and “category of amount,” respectively.

<sup>9</sup> See Attorney General Opinions GA-0158 (2004) and JC-0369 (2001).

required to include the value of the gift. Although we may favor that a gift reportable in a personal financial statement include its value, we must take a statute as we find it. And, as stated previously, we cannot add words to the statute, no matter how desirable such additions might seem. In conclusion, we reaffirm the position we articulated in the 1999 advisory opinion, which is that the description of a gift reportable in a personal financial disclosure statement is not required to include the value of the gift.

In our opinion, the requirement to describe a gift of cash or cash equivalent may be satisfied by including in the description the following: "currency," or a description of the gift, such as "check" or "money order," as appropriate. In our opinion, a description consisting of "pieces of paper" or "envelope" is not sufficient.

Due to public concern regarding this issue, we will ask the legislature to consider whether the statute should be amended to require a gift reportable in a personal financial statement to include the value of the gift.

#### SUMMARY

The description of a gift of cash or cash equivalent that is reportable under section 572.023(b)(7) of the Government Code is not required to include the value of the gift.

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<sup>10</sup> Ethics Advisory Opinion No. 415 (May 1999)