



★ TEXAS SUPREME COURT ★ **DOLLAR DOCKET**

In Texas, 48% of judges and 79% of lawyers say contributions significantly influence judicial decisions. - Texas Supreme Court poll

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Legge Wrap-Up

Majority Opinion: End 'Clerk Perks'

Accustomed to being the last word on legislative intent, the Texas Supreme Court recently got a rebuke from the Texas Legislature, which had to remind the court that judicial employees are not exempt from state "Bribery and Corrupt Influence" laws.

Section 36.08(e) of the penal code plainly says that a judicial employee breaks the law if he or she "agrees to accept any benefit" from a person with an interest in a matter before the court. For the past nine months the court has called this language "unclear," insisting that it does not apply to its own briefing clerks. These clerks have received as much as \$45,000 in pre-employment bonuses from law firms with cases before the court.

As a House-Senate conference committee finalized clerk-perk legislation now on the Governor's desk (S.B. 1210), Justice James Baker lobbied conferees for special treatment. "Justice Baker just insisted that the law clerks at the Supreme Court of Texas should be exempted from the Texas penal code and ethics laws that every public servant in the state of Texas has to work under," conferee Jim Dunnam, told the full House on May 27th.

In conference committee, Rep. Dunnam, who wrote the House bill, held the line against any such special treatment. "If we're going to have ethics in government," Dunnam told his House colleagues, "you ought to start with the judiciary."

In a strong hedge against future reinterpretations of this law, Rep. Dale Tillery asked Dunnam to read the legislative intent into the record. "With this final version of S.B. 1210," Dunnam said, "the legislature is confirming that Chapter 36 of the penal code applies to all public servants—including law clerks at the Supreme Court."

This legislative "clarification" is ironic. By and large, the court's conservative justices rhetorically wrap them-

May Dollar Docket

The top three money cases delivered by the Texas Supreme Court in May and the corresponding contributions to justices from the parties and/or attorneys.

May 10, 2001

Interstate Northborough v. State of TX \$326,230
\$136,259

Allstate Ins. v. Bonner \$70,850
\$0

May 31, 2001

Subaru v. David McDavid Nissan \$34,350
\$500

selves in the robes of "strict-constructionists," professing to rely on the plain language of statutes rather than actively interpreting laws to promote a judicial agenda. In the clerk-perk scandal, the court reinterpreted state laws to exempt itself from anti-corruption provisions. This self-serving judicial activism forced a legislative rebuke.

In addition to reaffirming existing anti-corruption law, S.B. 1210 further advances the public interest by requiring judicial employees to publicly recuse themselves from cases that pose conflicts with future employers (the court has not disclosed such recusal records, arguing that no such records are kept). This bill also requires court employees to publicly disclose any prospective relationships that they enter into with private employers.

While legislators clamped down on clerk perks this session, they again dropped the ball on judicial-selection reform. Although proposals to banish special-interest money from Texas courts went farther than they have in past sessions, they fizzled out short of the mark. Rep. Pete Gallego's proposal to publicly finance appellate judge campaigns (HB 4) died in the House Judicial Affairs Committee. That panel instead moved a Senate-approved bill seeking gubernatorial appointments of appellate judges (SB 129). The House allowed this reform measure, which was sponsored by Sen. Robert Duncan, to die without even submitting it to a full floor vote.

With voters likely to pick at least six high-court justices in 2002, its open season again for special interests.●