



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 1

April 23, 1992

Whether an appointed officer of a state agency that is not listed as a "major" state agency must file a financial disclosure statement under article 6252-9b, V.T.C.S., if the officer does not receive a salary.

The Texas Ethics Commission has adopted a motion to address the question of whether an appointed officer of a state agency that is not listed as a "major" state agency,¹ must file a financial disclosure statement under article 6252-9b, V.T.C.S., if the officer does not receive a salary.

Article 6252-9b was amended, effective as of January 1, 1992, to provide that "every state officer and every party chairman shall file with the commission a financial statement" on or before April 30.² V.T.C.S. art. 6252-9b, § 3(a). "State officer" is defined to mean "an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency as defined in this section." *Id.* § 2(1).

Previously, only elected officers, salaried appointed officers, executive heads of state agencies, and appointed officers serving in major state agencies were required to file annual financial disclosure statements.³ Acts 1973, 63d Leg., ch. 421, at 1086. The January 1, 1992, amendment changed that by requiring "every state officer" to file a financial statement. Again, "state officer" includes any "appointed officer" regardless of whether the officer receives a salary and regardless of whether the officer serves in a major state agency. Therefore, an unsalaried, appointed officer in an agency that is not a "major state agency" is no longer exempt from the requirement to file an annual financial statement.

Section 2(3) of article 6252-9b defines "appointed officer" as:

- (A) the secretary of state;
- (B) an individual appointed with the advice and consent of the senate to the governing board of any state-supported institution of higher education;
- (C) an officer of a state agency who is appointed for a term of office specified by the constitution or a statute of this state, excluding a person appointed to fill a vacancy in an elective office; or
- (D) a person who is not otherwise within the definition of elected officer, appointed officer, or executive head of a state agency, but who holds a position as a member of the governing board or commission of a state agency acquired through a method other than appointment.

A number of questions have arisen about the application of subsection (3)(C). Subsection (3)(C) brings within the definition of "appointed officer" a person appointed as an officer of a "state agency" who has a constitutional or statutory term of office. V.T.C.S. art. 6252-9b, § 2(3). Article 6252-9b defines a "state agency" to include river authorities and certain educational institutions. It also defines "state agency" as an agency that:

- (i) is in the executive branch of state government;

(ii) has authority that is not limited to a geographical portion of the state; and

(iii) was created by the constitution or a statute of this state.

Id. § 8(A). If the agency in which a person serves does not fit the article 6252-9b definition of a "state agency," that person is not an "appointed officer" for purposes of subsection (3)(C), and (D) of section 2. *See* Attorney General Opinion H-409 (1974) (construing the term "agency" for purposes of this definition). Also, because a person is an "appointed officer" under subsection (C) only if he is appointed for a term that is fixed by the constitution or a specific statute, he is not an "appointed officer" for purposes of section 2(3)(C) if he serves at the pleasure of another person.

Because the financial statements to be filed in 1992 require information about 1991, some state officers who previously did not have to file have asked whether the constitution permits the legislature to require board members who were appointed before January 1, 1992, to file financial disclosure statements for 1991. Attorney General Opinion H-190 (1973), determined that the requirement to file a financial statement covering the period before the effective date of the filing requirement is not unconstitutional. The opinion states:

This Act would be retroactive and unconstitutional if it made it a crime for a public official to have been possessed of certain described properties at a time prior to its enactment This it does not do. It presently requires the filing of a statement of financial activities for a period of one year. No penalty is attached to any act or omission to act prior to the effective date.

Attorney General Opinion H-190 at 2 (emphasis in original). The same reasoning applies in this instance. Therefore, the application of the 1991 amendment to article 6252-9b to persons appointed before January 1, 1992, is not unconstitutional.

SUMMARY

Article 6252-9b, as amended, requires "every state officer" to file an annual financial disclosure statement. This includes appointed officers who hold non-salaried positions. This current requirement to file a statement based on the previous year's financial activity is not retroactive or unconstitutional as to those appointed officers who were appointed before the amendment's effective date.

¹ Section 2(5)(A) of article 6252-9b lists major state agencies.

² Article 6252-9b, section 3(h), provides for a filing extension of up to 60 days:

A person required to file a financial statement under Subsection (a) of this section may request the [commission] to grant an extension of time of not more than 60 days for filing the statement. The [commission] shall grant an extension of not more than 60 days if the request is received prior to the filing deadline or if a timely filing or request for extension is prevented because of physical or mental incapacity. Not more than one extension may be given to a person in one year except for good cause shown.

³ A 1974 attorney general opinion determined that appointed officers of state agencies did not have to file financial disclosure statements unless they were salaried or in an agency listed in article 6252-9b as a major state agency. Attorney General Opinion H-255 (1974). However, this opinion was based on language in article 6252-9b that was altered by amendment effective January 1, 1992. This distinction between which appointed officers must file annual statements was done away with by the amendment requiring every "state officer" to file an annual financial statement. A distinction, however, remains between officers of a "major state agency" and other appointed officers. Section 3(b) of article 6252-9b requires "appointed officers of major state agencies" to file financial statements within 30 days after appointment, qualification for office, or senate confirmation.