



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 4

April 23, 1992

Whether an association of owners of recreational facilities may provide free family passes to legislators and certain members of the executive branch. (AOR-3)

The Texas Ethics Commission has been asked to consider whether the provisions of Senate Bill 1 would prohibit an association of owners of recreational facilities from providing legislators and certain members of the executive branch free family passes to recreational facilities. This request raises questions about the application of chapter 305 of the Government Code, which governs the registration of lobbyists.

Chapter 305 requires registration with the Ethics Commission by a person who meets either an expenditure or a compensation threshold in regard to direct communications with members of the legislative or executive branch "to influence legislation or administrative action." *Id.* § 305.003(a). "Person," for purposes of chapter 305, includes an association. *Id.* § 305.002(8). Thus, the registration requirement would be applicable to the association in question if the association, through its agents, communicates directly with one or more members of the legislative or executive branch; if the communication is for the purpose of influencing legislation or administrative action; and if the association meets either the compensation or expenditure threshold.

The first question is whether the association would communicate directly with the legislators and members of the executive branch by providing them free passes. To "communicate directly with" is defined broadly to mean "contact in person or by telephone, telegraph, or letter." *Id.* § 305.002(2). In order to transfer the passes, the association would have to make contact in some way with members of the legislative and executive branches. Thus, the transfer of the passes would be direct communication for purposes of chapter 305.

The second question is whether the direct communication would be for the purpose of influencing legislation or administrative action. "Administrative action" includes any matter that *may be* the subject of action by a state agency. *Id.* § 305.002(1). "Legislation" includes any matter that *may be* the subject of action by either house of the legislature. *Id.* § 305.002(6). The requestor describes the purpose of the communication as follows: "Aside from goodwill, the main reason that the pass is given is the hope that its use will give Legislators an insight into some of the problems and services which are dealt with by the . . . industry." Goodwill and legislative insight into industry problems are of value, of course, only because of the possibility that members of the executive branch or the legislature may take action in regard to the industry. We must conclude, therefore, that the passes would be for the purpose of influencing legislation or administrative action.

The final issue in regard to the registration requirement is whether the association would meet the compensation or expenditure threshold. A person meets the expenditure threshold if he or she expends more than \$200 in a calendar quarter on lobbying activities. *Id.* § 305.003; *see also id.* § 305.006(b). An expenditure includes a gift of anything of value. *Id.* § 305.002(5). Although the requestor does not state the value¹ of a family pass, the total value of passes for each member of the legislature and some members of the executive branch would likely exceed \$200 in a calendar quarter. If so, the association would be required to register under chapter 305.

Lobbying expenditures must be reported in the following categories: (1) transportation and lodging; (2) food and beverages; (3) entertainment; (4) gifts, other than awards and mementos; (5) awards and mementos; and (6) expenditures made for the attendance of members of the legislative or executive branch at political fund-raisers

or charity events. *Id.* § 305.006(b). A pass for use of a recreation facility would be reportable as "entertainment." The association would be required to list the pass as an expenditure for entertainment for the benefit of a member or members of the legislative branch. *Id.* If the value of the pass exceeded \$50, the association would have to report the name of the legislator or legislators benefitted, the value of the pass, and the date and place the pass was transferred. *Id.* § 305.0061(b). The legislature has not required that individual legislators disclose the transfer of gifts from lobbyists on their personal financial statements. *See* V.T.C.S art. 6252-9b, § 4(7)(C).

A registrant may make lobbying expenditures for entertainment only if the registrant is present at the entertainment event. *Id.* §§ 305.006(f), 305.024(a)(7). Thus, the association may provide the free passes to members of the legislative and executive branches only if the registrant is present each time a member of the legislative or executive branch uses the pass. *See also id.* § 305.024(a)(4) (an expenditure or series of expenditures for entertainment for any one member of the legislative or executive branch may not exceed \$500 in a calendar year).

SUMMARY

An association's transfer of a free pass for use of recreational facilities would be a direct communication for purposes of chapter 305 of the Government Code.

Such a transfer for the purpose of generating goodwill among members of the legislative and executive branches and for the purpose of giving legislators insight into industry problems would be to influence administrative or executive action.

The transfer of such a pass would be reportable as "entertainment." Thus, an association may provide such a pass only if the registrant is present each time the pass is used.

¹ The value of such a pass, for purposes of chapter 305, would be the cost to the general public of such a pass.