



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 14

June 4, 1992

Applicability of the lobby statute to negotiations between consultants and regulatory agencies in regard to permits. (AOR-31)

The Texas Ethics Commission has been asked about the application of chapter 305 of the Government Code to certain consultants. The consultants in question work with businesses to help them obtain permits from agencies such as the Air Control Board, the Water Commission, and the Department of Health. The consultants' activities include: (1) filing applications for permits, (2) negotiating about the terms of permits, (3) negotiating about the manner in which to abate a permit violation, and (4) discussing the best available technology for a certain operation.

Under chapter 305 a person is required to register with the Ethics Commission if he receives more than \$200 in compensation to communicate directly with members of the executive branch of state government to influence administrative action. Gov't Code § 305.003(a)(2). See generally [Ethics Advisory Opinion No. 3](#) (1992) (regarding registration as a lobbyist). The commission has adopted rules providing, for purposes of the compensation threshold, that certain activities are not communications to influence legislation or administrative action and are not required to be reported on registration forms or activity reports. Tex. Ethics Comm'n, 17 Tex. Reg. 358 (emergency rule to be codified at title 1, section 10.7, of the Texas Administrative Code)¹. One such activity is "the mere preparation and submission of an application or other written document providing information required by law, including statute, rule, regulation, order, or subpoena." *Id.* (rule 10.7(a)(1)). Thus the filing of an application for a permit would not require registration under chapter 305.

Another type of excepted activity is "direct communications for the purpose of compliance with existing laws, administrative rules, policies, and procedures, when there is no attempt to change or seek exceptions to such rules, policies, or procedures." *Id.* (rule 10.7(a)(8)). This exception would apply to negotiations about permits as long as the negotiations were intended to show that the person or entity seeking the permit does or can meet agency standards of general applicability. If the negotiations are directed at changing agency standards or at seeking waivers of agency standards,² the exception would not apply. Whether any particular negotiation or discussion would exceed the scope of the exception set out in section 10.7(a)(8) of the commission's rules is a fact question to be determined on a case-by-case basis.³

The requestor has also asked about the application of chapter 305 to a compensated consultant who negotiates with the Workers' Compensation Commission for approval of an employer's safety program. The same standard would be applicable here. As long as the negotiations were about whether the program satisfied existing standards of general applicability, the negotiation would be within the exception set out in section 10.7(a)(8) of the rules.

SUMMARY

Applying for a permit with a regulatory agency is excepted from the application of the lobby statute, chapter 305 of the Government Code. Negotiations with regulatory agencies in regard to permits are excepted from the application of the lobby statute as long as the negotiations are in regard to whether an applicant does in fact meet existing agency standards of general application.

- ¹ The rules of the Ethics Commission that were proposed for codification at chapter 10 of title 1 of the Texas Administrative Code actually should have been proposed for codification at chapter 40 of that title. For purposes of this opinion, we have cited the rules as published.
- ² The registration and reporting requirements of the lobby statute would not apply if an entity sought a waiver that was available to any entity that satisfied established requirements.
- ³ The registration and reporting requirements of the lobby statute would apply to any *expenditures*, as described in section 305.006(b), for the benefit of members of the executive branch made in connection with such activity.