



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 15

June 4, 1992

Application of chapter 305 of the Government Code to certain communications between industry regulators and banking officers or employees. (AOR-19)

The Texas Ethics Commission has been asked to respond to several questions about the application of chapter 305 of the Government Code to bank officers and employees. The first question is whether a bank officer or employee must register as a lobbyist under chapter 305 if he responds to questions from bank examiners and engages in discussions regarding loan quality. The second question is whether a bank officer or employee would be engaging in lobbying activity if he submitted to the Banking Department of Texas a charter application or a notice of change in control and provided information intended to persuade the agency that the agency should take certain action in regard to the application or notice.

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). This 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)). Therefore, the filing of an application and the provision of information does not require registration with the Ethics Commission and does not have to be reported to the Ethics Commission.

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)). There is a similar exception for "direct communications in connection with an audit, inspection, or government investigation to determine compliance with existing laws, regulations, and policies." *Id.* (rule 10.7(a)(9)). These exceptions apply to discussions and negotiations about loans or applications as long as the negotiations are intended to show that a bank 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 exceptions set out in section 10.7 of the commission's rules do not apply. *See generally* [Ethics Advisory Opinion No. 14](#) (1992) (considering application of lobby statute to negotiations about permits issued by regulatory agency). Whether any particular negotiation or discussion would exceed the scope of the exception set out in section 10.7(a)(8) of the rules is a fact question to be determined on a case-by-case basis.³

SUMMARY

The registration and reporting requirements of chapter 305 of the Government Code are not applicable, in the context of a bank examination, to responses to questions from bank examiners and discussions regarding loan quality. Nor are those requirements applicable to the submission of a charter application to the Banking Department of Texas or the submission of a notice of change in control. Further, those requirements do not apply

to the provision of information intended to persuade the agency that the agency should take certain action in regard to the application or notice, as long as the information is intended to show compliance with standards of general applicability.

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 to 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.