



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 20

*June 4, 1992*

*Whether an expert witness who is paid to testify during a contested, public hearing before an administrative agency is required to register as a lobbyist under chapter 305 of the Government Code. (AOR-18)*

The Texas Ethics Commission has been asked whether an expert witness who is paid to testify during a contested, public hearing before an administrative agency is required to register as a lobbyist under chapter 305 of the Government Code. 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). Testimony before an administrative agency acting in an adjudicative capacity is communication with members of the executive branch to influence administrative action. This commission has, however, adopted an emergency rule under chapter 305 that provides in part as follows:

For purposes of the compensation threshold of the Government Code, §305.003(a)(2), direct communication to influence administrative action does not include testimony or appearance in a public hearing or other communication made by the party, or a party's representative of record, in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure and Texas Register Act.

Tex. Ethics Comm'n, 17 Tex. Reg. 358 (1992) (to be codified at title 1, section 10.5(a), of the Texas Administrative Code).<sup>1</sup>

The question raised is whether that exception applies to any testimony in a proceeding of the type described or whether it applies only to testimony of a party or a party's representative. The reference to testimony would serve little purpose, however, if it applied only to a party or a party's representative. A party would generally not receive compensation for testimony, and the party's representative of record (the party's lawyer) would generally not give testimony. Rather, non-party witnesses would typically be the persons receiving compensation for testimony. Therefore the exception should apply to the testimony of paid witnesses, and exempt such paid testimony from the compensation threshold of the lobby statute.

### SUMMARY

Ethics Commission rule 10.5 exempts from the compensation threshold of the lobby statute paid testimony by any person in a proceeding of an adjudicative nature of the type authorized by or subject to the Administrative Procedure and Texas Register Act, article 6252-13a, V.T.C.S.

<sup>1</sup> 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.