



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 22

June 4, 1992

Whether an accountant who is a state officer must include on his financial statement the names of certain clients and fees paid by those clients. (AOR-20)

The Texas Ethics Commission has been asked whether article 6252-9b, V.T.C.S., requires the disclosure of information made confidential by section 26 of the Texas Public Accountancy Act of 1991 or by rules of the federal Securities and Exchange Commission (SEC). Article 6252-9b, section 4(f), requires state officers and party chairmen to annually disclose certain financial information. At the outset, we note that the requestor cites no specific SEC rules that conflict with the requirements of article 6252-9b, section 4(f). However, if a particular SEC rule makes certain information confidential, the persons subject to that rule would have to abide by that rule.¹

The question this opinion will address is whether article 6252-9b requires disclosure of information made confidential by the Public Accountancy Act of 1991, article 41a-1, V.T.C.S. The question has arisen in a situation in which an accountant subject to the Public Accountancy Act is also subject to the financial disclosure requirements of article 6252-9b.

Article 6252-9b requires state officers and party chairmen to file annual financial disclosure statements for the preceding year. One of the financial disclosure requirements is as follows:

A state officer who receives a fee for services rendered by the officer to or on behalf of a person required to be registered under Chapter 305, Government Code,² or to or on behalf of a person or entity that the officer actually knows directly compensates or reimburses a person required to be registered under Chapter 305, Government Code, shall report on the financial statement the name of each person or entity for which the services were rendered and the category of the amount of each fee.

V.T.C.S. art. 6252-9b, § 4(f) (emphasis added). This section therefore requires a state officer to disclose the names of persons required to register under chapter 305 who pay fees for services rendered by the state officer and the category of the fee. It also requires the state officer to disclose the fees paid and the names of people the state officer "actually knows" are compensating or reimbursing persons required to register under the lobby statute. These disclosures are public information. *Id.* § 9(a).

Accountants and certain other persons are subject to the Public Accountancy Act of 1991, which contains a provision that certain client information be kept confidential. Section 26 of that act provides:

A licensee or a partner, officer, shareholder, or employee of a licensee may not voluntarily disclose information communicated to the licensee by a client in connection with services rendered to the client by the licensee in the practice of public accountancy, except with the permission of the client or a duly appointed representative of the client. This section does not prohibit disclosure by the licensee of information required to be disclosed:

- (1) by the standards of the public accounting profession in reporting on the examination of a financial statement;
- (2) in a court proceeding;
- (3) in an investigation or proceeding by the board under this Act;
- (4) in an ethical investigation conducted by a professional organization of certified public accountants; or
- (5) in the course of a quality review under Section 15B of this Act.

The initial question is whether the disclosure by an accountant, who is also a state officer, of the name of a client and the fee paid by that client would be considered confidential information under this statutory privilege. Referral to the scope of other types of professional confidentiality provisions can be used to better understand the scope of the accountant confidentiality provision.

Other professional groups also are required to keep certain matters confidential. Rule 503 of the Texas Rules of Civil Evidence, for example, sets out an evidentiary lawyer-client privilege that the client can assert to keep communications between client and attorney confidential. *See also* Tex. Rules of Crim. Evidence, Rule 503; Tex. Disciplinary Rules of Prof. Conduct, Rule 1.05. However, the attorney-client privilege has been construed by case law not to include client identity and fee arrangements unless revealing the client's identity and fee arrangement would itself reveal a confidential communication. *In Re Reyes-Requena*, 725 F.Supp. 239 (S.D. Tex. 1990).³

Physicians also are subject to confidentiality restrictions. The Ethics Commission has determined that officers who are physicians do not have to include on their financial statements any information that is made confidential by the Medical Practice Act. *See Ethics Advisory Opinion No. 21* (1992). Section 5.08(b) of the Medical Practice Act, article 4495b, V.T.C.S., states:

Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

Of significance is that the Medical Practice Act specifically states patient identity is to be kept confidential. The Public Accountancy Act of 1991 makes no such specific reference. Neither do the lawyer-client confidentiality rules. Disclosing that an individual consulted a particular physician could reveal intimate or embarrassing information. A client could therefore have a common-law right to privacy in such information. *See* Attorney General Opinion JM-81 (1983). For example, if a doctor is a specialist in a particular disease, by disclosing for public record the identity of a patient the doctor could be revealing information about that person's health. This would not generally be the case with those who consult with accountants.

It does not appear that the provisions of the Public Accountancy Act of 1991 are in conflict with the provisions of article 6252-9b. The requestor gives no facts to indicate that disclosing the identity of a particular client and the category of fee paid by that client for the preceding year would reveal information made confidential. The provisions of article 6252-9b, section 4(f), therefore require the disclosure of the name or entity for whom services were rendered and the category of the fee.

SUMMARY

Section 4(f) of article 6252-9b, V.T.C.S., which requires state officers to file annual financial statements, does not conflict with section 26 of the Public Accountancy Act of 1991, article 41a-1, V.T.C.S. The requestor presents no facts to indicate that by disclosing the name of a client and category of fee paid by that client, state officers who are accountants would be revealing information made confidential by the Public Accountancy Act.

If a particular SEC rule makes financial information required by article 6252-9b confidential, the person subject to that rule would have to keep such information confidential.

¹ U.S. Const. art. VI (supremacy clause).

² Chapter 305 of the Government Code concerns registration and regulation of lobbyists.

³ "If the disclosure of the client's identity will also reveal the confidential purpose for which he consulted an attorney, we protect both the confidential communication and the client's identity as privileged." *In re Grand Jury Subpoena*, 926 F.2d 1423, 1431 (5th Cir. 1991).