



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 26

June 4, 1992

Whether the Texas Planning Council for Developmental Disabilities is a "state agency" for purposes of article 6252-9b, V.T.C.S. (AOR-34)

The Texas Ethics Commission has been asked whether the Texas Planning Council for Developmental Disabilities is a "state agency" for purposes of article 6252-9b, V.T.C.S. Members of the council are appointed by the governor, serve set terms, and do not receive salaries. Hum. Res. Code ch. 112. If the council is not a "state agency" for purposes of article 6252-9b, then appointees to the planning council do not have to file financial disclosure statements as required of state officers appointed to state agencies.¹ See generally [Ethics Advisory Opinion No. 1](#) (1992).

Section 2(8)(A) of article 6252-9b defines "state agency"² as any department, commission, board, office, or other agency that:

- (i) is in the executive branch of state government;
- (ii) has *authority* that is not limited to a geographical portion of the state; and
- (iii) was created by the constitution or a statute of this state. (Emphasis added.)

Under this definition, if an entity does not wield actual "authority," it does not fall within the definition of a "state agency" for purposes of 6252-9b.³ The Planning Council does not provide services, does not distribute funds, does not implement policy, and does not engage in adjudication or rulemaking.⁴ The council can propose policies, submit reports, and work jointly with its "administering agency" in planning. The requestor informs us that the Texas Rehabilitation Commission (TRC) serves as the "administering agency" for the Planning Council. See also Hum. Res. Code § 112.017 et seq. As administering agency for the council, TRC disburses funds, staffs the council, adopts rules, and carries out certain other clearly defined duties. *Id.* § 112.018. Thus the Texas Planning Council for Developmental Disabilities appears to function in an advisory capacity and does not exercise actual "authority."⁵ Therefore, it is not a state agency for purposes of article 6252-9b, and the members of the Planning Council are not required to file annual financial disclosure forms.

SUMMARY

The Texas Planning Council for Developmental Disabilities is not a "state agency" for purposes of article 6252-9b, V.T.C.S.

¹ Article 6252-9b, section 3(a), requires state officers to file annual financial statements:

On or before April 30th of each year, every state officer and every party chairman shall file with the commission a financial statement complying with the requirements of Section 4 of this Act.

Section 2(1) of article 6252-9b includes in its definition of state officers who must file financial disclosure statements a nonsalaried "appointed officer." Those "appointed officers" who must file financial disclosure forms include

an officer of a *state agency* who is appointed for a term of office specified by the constitution or a statute of this state, excluding a person appointed to fill a vacancy in an elective office.

V.T.C.S. art. 6252-9b, § 2(3)(C) (emphasis added).

² Also included in the definition of "state agency" are river authorities and certain institutions of higher learning. Neither definition is applicable to this situation.

³ Attorney General Opinion H-409 (1974) contains a general discussion of what an "agency" is, and the difficulty in defining what an "agency" is. The opinion states, at page 2:

Even if not engaged in formal rule making or adjudication an "agency" should at the very least be relatively autonomous within its sphere of delegated authority, with a governing body possessing policy making functions and powers.

Cf. Aldine Indep. School Dist. v. Standley, 280 S.W.2d 578 (Tex. 1955) ("Officer" is one who exercises some function of government largely independent of others' control).

⁴ We note these as examples of authority a state agency might have and are not here concerned with the definition of "regulatory agency."

⁵ See Attorney General Opinion JM-578 (1986) which speaks of the Texas Planning Council as an "advisory" entity.