



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 27

June 4, 1992

Whether a designee representative to the Interagency Council on Sex Offender Treatment is required to file a personal financial disclosure statement. (AOR-37)

The Texas Ethics Commission has been asked whether a designee representative to the Interagency Council on Sex Offender Treatment is required to file a personal financial disclosure statement. Section 3(a) of article 6252-9b, V.T.C.S., requires state officers to file annual financial disclosure statements reflecting the previous year's financial activity.¹ The question is whether a designee member is a state officer for purposes of the financial disclosure requirement.

The Interagency Council on Sex Offender Treatment includes various agency executive heads and the director of the Criminal Justice Division of the Governor's Office or their designated representatives. Any designated representative must be an officer or employee of the agency or division he represents. There are various duties the council performs, one of which is set out in section 8(4) of article 4413(51), V.T.C.S., which directs the council to

distribute money appropriated by the legislature for that purpose to political subdivisions, private organizations, or other persons to be used for the development, operation, or evaluation of sex offender treatment programs.

Council members thus exercise discretion in distributing funds for sex offender treatment programs. There is nothing in article 4413(51) to indicate that a designated member of the Interagency Council on Sex Offender Treatment has less discretion in this area or in any other area of council responsibility merely because his authority was delegated to him. The statute indicates that a designated council member functions in the same capacity as nondesignated members.

The first inquiry is whether the various agency heads and the director of the Criminal Justice Division of the Governor's Office would have to file annual financial statements for service on the council.² Section 3(a) of article 4413(51) names certain agency executive heads and the director of the Criminal Justice Division of the Governor's Office as members of the council.³ As members of the council, these persons would fall within the article 6252-9b definition of "state officer" for purposes of article 6252-9b. Article 6252-9b, section 2(3)(D), includes in the definition of state officers:

a person who is not otherwise within the definition of elected officer, appointed officer, or executive head of a state agency, but who holds a position as a member of the governing board or commission of a state agency acquired through a method other than appointment.

The Interagency Council on Sex Offender Treatment is a state agency for purposes of article 6252-9b. *See generally Ethics Advisory Opinion No. 26* (1992) (distinction between state agencies and advisory entities).⁴ The various agency heads and the director would be holding their positions on the council through a method "other than appointment." These agency heads and directors therefore would be state officers required to file annual financial statements.

Since those who can designate a representative would be "state officers" for purposes of article 6252-9b, the question posed is whether a member of the council who is designated to a position would also fall within the article 6252-9b definition of "state officer." A person designated to the council is holding that position by "a method other than appointment." The designated representative functions in the same capacity as a designated member and is actually exercising governmental authority. We note the policy behind requiring public disclosure of state officers' financial activity, outlined in part in section 1 of article 6252-9b:

It is the policy of the State of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. To implement this policy and to strengthen the faith and confidence of the people of Texas in their state government, there are provided standards of conduct and disclosure requirements to be observed by persons owing a responsibility to the people of Texas and the government of the State of Texas in the performance of their official duties.

Having a designated member of the Interagency Council on Sex Offender Treatment file a financial statement, when the member exercises actual governmental authority and discretion as a member of the council, serves this public policy.

SUMMARY

A designated member of the Interagency Council on Sex Offender Treatment is a state officer for purposes of article 6252-9b, V.T.C.S. A designated member must file a personal financial disclosure form.

¹ Section 3(a) of article 6252-9b, V.T.C.S., states: "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."

² These people might have to file financial statements for their service as state officers in other capacities. The focus of this opinion, however, is whether they would have to file based solely on the holding of a position on the Interagency Council on Sex Offender Treatment.

³ Although the statute states there are 13 members on the council, the specific listing of members identifies 14 individuals.

⁴ [Ethics Advisory Opinion No. 26](#) (1992) considered the application of the disclosure requirement to an officer of a state agency appointed for a term of office specified by the constitution or a statute. The opinion concluded that "state agency" does not include bodies that function in an advisory capacity only and do not exercise actual authority. The Interagency Council on Sex Offender Treatment exercises actual authority in regard to the distribution of funds, V.T.C.S. art. 4413(51), § 8(4), and is therefore a "state agency" for purposes of article 6252-9b.