



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 33

July 24, 1992

Whether employees of the Texas Guaranteed Student Loan Corporation are employees of a state agency for purposes of the lobby statute. (AOR-32)

The Texas Ethics Commission has been asked whether employees of the Texas Guaranteed Student Loan Corporation, who as part of their job duties have periodic contact with members of the state legislature concerning legislative matters, are required to register as lobbyists under chapter 305 of the Government Code.

The general rule is that a person must register as a lobbyist if the person makes a total expenditure of more than \$200 in a calendar quarter, not counting the person's own travel, food, or lodging expenses or the person's own membership dues, on lobbying activities (the "expenditure threshold"), or if the person receives compensation or reimbursement of more than \$200 in a calendar quarter, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, for lobbying activities (the "compensation threshold"). Gov't Code § 305.003(a); Tex. Ethics Comm'n, 17 Tex. Reg. 4444 (1992) (to be codified at title 1, sections 40.1 and 40.3, of the Texas Administrative Code). The requestor states that the employees do not expend more than \$200 in a calendar quarter in carrying out this portion of their duties.

A member of the judicial, legislative, or executive branch of the state government or an officer or an employee of a political subdivision is exempted from the compensation threshold by section 305.003(b) of the Government Code.¹ A government employee may spend a significant portion of his or her time communicating with other government employees. Indeed, the organization of the government into disparate agencies should not obscure the fact that all government employees are engaged in a common endeavor that requires communication within and among agencies. While this communication may be intended to resolve conflicts or to influence administrative or legislative action, it is incidental to government employment and is not the kind of activity commonly thought of as lobbying. The apparent legislative intent in enacting section 305.003(b), exempting employees of the state and of political subdivisions from the compensation threshold, is to recognize the need for them to communicate with one another as part of their employment. Accordingly, we must consider whether the Texas Guaranteed Student Loan Corporation may be characterized as a part of the state government or as a political subdivision for purposes of section 305.003(b) of the Government Code or section 40.3 of the commission's rules. If it is a state agency, communications made to the agency are regulated by the lobby statute. If it is not a state agency, then communications by the organization are subject to the lobby statute, while communications to the organization are not so subject.

The corporation is a public, nonprofit corporation created by chapter 57 of the Education Code. It guarantees loans to eligible students under the federal guaranteed student loan program established by the Higher Education Act of 1965, as amended. 20 U.S.C. § 1001 *et seq.* The corporation is governed by a board of ten directors, nine of whom are appointed by the governor with the advice and consent of the senate. The tenth member is the comptroller of public accounts, or the comptroller's designee. Educ. Code § 57.13.

In choosing to create the Guaranteed Student Loan Corporation as a public corporation, the legislature provided the corporation with a measure of administrative flexibility not available to state agencies or political subdivisions. Attorney General Opinion MW-295 (1981). This indicates a general legislative intent to not include

the corporation within provisions that apply to state agencies or political subdivisions generally. *Id.*² As there is nothing in either chapter 305 of the Government Code or in the corporation's enabling legislation to indicate that the legislature intended to include the corporation's employees within the coverage of the exception generally available to employees of the state government and political subdivisions, we find that the employees of the corporation are not exempt from the compensation threshold.

SUMMARY

The Guaranteed Student Loan Corporation is not a state agency or a political subdivision for purposes of chapter 305 of the Government Code. Therefore, an employee of the Guaranteed Student Loan Corporation must register as a lobbyist if he meets either the compensation threshold or the expenditure threshold in the lobby statute. Communications made to the Guaranteed Student Loan Corporation are not subject to regulation under the lobby statute.

¹ Also, a person is exempt from the compensation threshold if lobbying constitutes no more than five percent of the person's compensated time during a calendar quarter. Tex. Ethics Comm'n, 17 Tex. Reg. 4444 (1992) (to be codified at title 1, section 40.3(d), of the Texas Administrative Code).

² In Attorney General Opinion MW-295, the attorney general found that the Guaranteed Student Loan Corporation was not subject to a number of statutes generally applicable to state agencies (including the Open Meetings Act), but found that it was subject to the Open Records Act. The finding as to the Open Records Act was based on the unique definition of "governmental body" in the Open Records Act and was reaffirmed by the attorney general in Open Records Decision No. 563 (1990). We note that after Attorney General Opinion MW-295 was issued, the Guaranteed Student Loan Corporation was specifically brought within the coverage of the Open Meetings Act by an amendment to section 57.11 of the Education Code. Acts 1989, 71st Leg., ch. 985, § 1, at 4063.