



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 70

*October 23, 1992*

*Whether a member of the board of directors of a nonmajor state agency is an "officer" for purposes of article 6252-9b, V.T.C.S. (AOR-76)*

The Texas Ethics Commission has been asked to consider whether a member of the board of directors of a state agency is an "officer" for purposes of article 6252-9b, V.T.C.S. Section 2 of article 6252-9b defines "state officer" as

an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency.

V.T.C.S. art. 6252-9b, § 2(1). An "appointed officer" includes "an officer of a state agency who is appointed for a term of office specified by the constitution or a statute of this state." *Id.* § 3(C). The members of the board in question are appointed by the governor with the advice and consent of the senate for statutorily set terms, but the agency's statute identifies the members as "directors" rather than "officers."

A person is a "state officer" if he exercises any sovereign function of government for the benefit of the public largely independent of anyone else's control. *Aldine Indep. School Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955); Attorney General Opinion JM-19 (1983); *see also Texas Liquor Control Bd. v. Continental Distilling Sales Co.*, 199 S.W.2d 1009, 1012 (Tex. Civ. App.--Dallas 1947, writ ref'd n.r.e.) (state officer can be characterized as one whose jurisdiction is coextensive with the state, and who performs some of the governmental functions of the state under authority of state law). The duties of the position rather than the title one holds determine whether a person is an officer. *See, e.g.*, Attorney General Opinions JM-704 (1987), JM-594 (1986) (statute establishing Angelina and Neches River Authority confers an "officer's powers and duties" on the directors of the authority), MW-39 (1979) (Director of Operations of a county-administered CETA program does not possess any of the elements attributable to an officer). The state agency in question, under control of the board of directors, may sue and be sued, make and enter into contracts, acquire certain property, and issue revenue bonds. Thus it is clear that a member of the board of directors of the state agency in question is a state officer subject to article 6252-9b, V.T.C.S. *See also Ethics Advisory Opinions Nos. 28, 26* (1992) (unless an entity wields actual "authority," it is not a state agency and its officers are not state officers).

Because the state agency in question is not a "major state agency," the requestor asks about the applicability of the act's financial disclosure requirements to members of the board. Before amendment in 1991, the act required appointed officers to file financial statements only if they served in major state agencies. The act now requires "every state officer" to file financial statements. *Ethics Advisory Opinion No. 1* (1992). Regardless of whether a state officer was appointed before the effective date of the act, if the officer served at any time during the period between and including January 1 to April 30, 1992, he must file a financial statement. *Ethics Advisory Opinion No. 28* (1992). The act's requirement that an officer disclose his financial activity for the previous year is not unconstitutional. *Id.*

## **SUMMARY**

"Officer," for purposes of article 6252-9b, V.T.C.S., includes board members of a state agency that exercises government authority, even though the board members' statutory designation is "director."