



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 79

October 23, 1992

Whether the Texas Board of Pardons and Paroles is a "regulatory agency" for purposes of the revolving door provision in V.T.C.S. article 6252-9b. (AOR-114)

The Texas Ethics Commission has been asked to consider whether the Texas Board of Pardons and Paroles is a "regulatory agency" for purposes of V.T.C.S. article 6252-9b, section 7A(b). Section 7A(b), a "revolving door" prohibition, provides as follows:

(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility. This subsection does not apply to a rule-making proceeding that was concluded before the officer's or employee's service or employment ceased.¹

Subsection (f)(1) of section 7A defines "regulatory agency" for purposes of section 7A as follows:

"Regulatory agency" means any department, commission, board, or other agency that:

- (A) is in the executive branch of state government;
- (B) has authority that is not limited to a geographical portion of the state;
- (C) was created by the constitution or a statute of this state; and
- (D) has constitutional or statutory authority to engage in rule making, adjudication, or licensing.

The Board of Pardons and Paroles is in the executive branch of state government. *Rose v. State*, 752 S.W.2d 529, 534 (Tex. Crim. App. 1987). Its authority is not limited to a geographical portion of the state. It was created by the Texas Constitution. Tex. Const. art. IV, § 11.² Finally, the board has authority to determine eligibility for parole. *See* Code Crim. Proc. art. 42.18, §§ 1, 8, 14, 15. The exercise of such authority is "adjudication." Black's Law Dictionary 26 (6th ed. 1991) (adjudicatory action includes administrative actions "when they culminate in final determination affecting personal or property rights"). Therefore the Board of Pardons and Paroles is a regulatory agency for purposes of section 7A of article 6252-9b, V.T.C.S.

SUMMARY

The Board of Pardons and Paroles is a regulatory agency for purposes of section 7A of article 6252-9b, V.T.C.S.

¹ The prohibition applies only to a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary

schedule. V.T.C.S. art. 6252-9b, § 7A(c)(2). Also, if other law restricts the representation of a person before a particular state agency by a former state officer or employee of that agency, the other law prevails over this section. *Id.* § 7A(d).

² Although the Board of Pardons and Paroles was created by the constitution, it functions, at least in part, as a division of the Texas Department of Criminal Justice. *See* Gov't Code ch. 491, et seq.