



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 82

November 5, 1992

Whether a lawyer or other professional who charges clients an hourly rate for engaging in the activity described in section 40.7(a)(4) of the commission's lobby rules is receiving "special or extra compensation" for that work. (AOR -74)

A lawyer has asked the Texas Ethics Commission whether he must register as a lobbyist if he receives his regular hourly rate from a client to prepare and present comments on rules proposed by a state agency. The request indicates that the attorney who prepares and delivers the comments receives more than \$200 in a calendar quarter for this activity. Government Code section 305.003(a)(2) requires registration as a lobbyist if a person

receives compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of [more than \$200]¹ in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

The requestor asks if the attorney's activity would, however, be exempted by a rule that exempts the following activity for purposes of lobby registration and reporting requirements:

appearing, submitting public written comments, or testifying at a hearing before a member of the legislative or executive branch in conjunction with official proceedings or rulemaking procedures if the person does not receive special or extra compensation for the preparation, appearance, submission, or testimony other than actual expenses incurred for the preparation, appearance, submission, or testimony.

Tex. Ethics Comm'n, 17 Tex. Reg. 4445 (1992) (to be codified at title 1, section 40.7(a)(4), of the Texas Administrative Code). The pertinent language here is that the activities described are exempted if the person does not receive "special or extra compensation . . . other than actual expenses incurred." This language comes directly from a statutory provision. Gov't Code § 305.004(2).²

A lawyer who charges clients an hourly rate for engaging in the activity described in section 40.7(a)(4) of the commission's rules is receiving special compensation for that work. Whether other employment arrangements involve "special or extra compensation" must be determined on a case-by-case basis.

SUMMARY

A lawyer who charges clients an hourly rate for engaging in the activity described in section 40.7(a)(4) of the commission's rules is receiving "special or extra compensation" for that work.

¹ The Ethics Commission has adopted by rule a dollar amount as the reporting threshold. V.T.C.S. art. 6252-9d.1, § 1.11(d); Tex. Ethics Comm'n, 17 Tex. Reg. 4444 (1992) (to be codified at title 1, section 40.3(a)(2), of the Texas Administrative Code).

² The exception set out in Government Code section 305.004(2) is for:

a person whose only direct communication with a member of the legislative or executive branch to influence legislation or administrative action is an appearance before or testimony to one or more members of the legislative or executive branch in a hearing conducted by or on behalf of either the legislative or the executive branch and who does not receive special or extra compensation for the appearance other than actual expenses incurred in attending the hearing. That provision exempts activity from the section 305.003(a)(2) compensation threshold for lobby registration, as does section 40.7(a)(4) of the commission's rules.