



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 96

*December 10, 1992*

*Application of chapter 305 of the Government Code to representatives of the State Bar of Texas. (AOR-78)*

The Texas Ethics Commission has been asked to consider questions about the application of chapter 305 of the Government Code to representatives of the State Bar of Texas. The first question is whether officers or employees of the State Bar "who represent the Bar's official positions in the Legislature, or in connection with any activity which might otherwise constitute 'lobbying,' on behalf of the Bar" must register as lobbyists.

Chapter 305 of the Government Code, which regulates lobbying, requires a person who meets either one of two registration thresholds to register as a lobbyist. Gov't Code § 305.003. A person must register as a lobbyist if the person either (1) expends more than \$200 in a calendar quarter on certain types of activities to communicate directly to influence legislation or administrative action or (2) receives more than \$200 in compensation or reimbursement in a calendar quarter to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. *Id.* A "member" of the judicial, legislative, or executive branch of state government, however, is excepted from the lobby registration requirements. *Id.* § 305.003(b); 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); see [Ethics Advisory Opinion No. 73](#) (1992) (exception applies only to government employee acting in official capacity). The question, then, is whether officers or employees of the State Bar are "members" of the judicial branch.

The State Bar is an administrative agency of the judicial branch. Gov't Code § 81.011(a). The lobby statute defines "member of the legislative branch" to include any officer or employee of the legislature. *Id.* § 305.002(7). It defines "member of the executive branch" to include any officer or employee of any executive branch agency. *Id.* § 305.002(4). The lobby statute does not, however, define "member of the judicial branch."<sup>1</sup> By analogy to the definitions of "member of the legislative branch" and "member of the executive branch," we conclude that an officer or employee of an agency in the judicial branch would be a member of the judicial branch of state government for purposes of section 305.003(b).

The "officers" of the State Bar in this context are the members of the governing board of the State Bar, which is the board of directors. Gov't Code §§ 81.019, 81.020; see [Ethics Advisory Opinion No. 70](#) (1992) (regarding meaning of term "officer" in article 6252-9b, V.T.C.S.). The president, president-elect, and past president are members of the board of directors. Gov't Code §§ 81.019, 81.020. In summary, members of the board of directors of the State Bar and employees of the State Bar are not required to register as lobbyists for activities in their official capacity. See *id.* §§ 81.019(a) (officers of State Bar), 81.020(a) (directors of State Bar).

The second question is as follows:

Must individual members of a Section of the State Bar of Texas who represent the position of the Section with respect to legislative proposals and participate in activities which might otherwise constitute "lobbying" under the new ethics law register as lobbyists?

As indicated above, we must look to the definitions of "member of the legislative branch" and "member of the executive branch" in determining the scope of the term "member of the judicial branch" for purposes of section

305.003(b) of the lobby statute. In order to practice law in Texas, a lawyer must be a member of the State Bar. *Id.* § 81.102. Members of the State Bar are akin to licensees of various regulatory agencies in the executive branch. The definition of "member of the executive branch" does not include a licensee of a regulatory agency. By analogy, therefore, we conclude that a member of the State Bar is not a "member of the judicial branch."<sup>2</sup> Nonetheless, an individual member of the State Bar is not required to register as a lobbyist unless the individual satisfies either the "expenditure" threshold or the "compensation or reimbursement" threshold. *Id.* § 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); *see also* [Ethics Advisory Opinion No. 3](#) (1992).

### SUMMARY

Members of the board of directors of the State Bar and employees of the State Bar are "members of the judicial branch of state government" for purposes of section 305.003(b) of the Government Code. Members of the State Bar are not.

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<sup>1</sup> This is probably because the terms "member of the legislative branch" and "member of the executive branch" appear throughout the lobby statute. The term "member of the judicial branch" appears only in section 305.003(b).

<sup>2</sup> As indicated, the exception set out in section 305.003(b) does apply to officers and employees of the State Bar acting in their official capacity. Membership alone does not entitle a lawyer to exercise any governmental authority. See generally *id.* § § 81.051 - 81.054. Therefore, members are not "officers" of the State Bar. See [Ethics Advisory Opinion No. 70](#) (1992) (regarding meaning of "officer"). Members are clearly not "employees" of the State Bar. See Gov't Code § 81.054.