



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 124

February 18, 1993

Whether members of the Elimination of Architectural Barriers Advisory Committee, the Air Conditioning and Refrigeration Contractors Advisory Board, the Texas Industrialized Building Code Council, the Auctioneer Education Advisory Board, the Board of Boiler Rules, and the Property Tax Consultants Advisory Council are required to file personal financial disclosure statements. (AOR-151)

The Texas Ethics Commission has been asked to consider whether the appointed members of the following governmental bodies are required to file personal financial disclosure statements under V.T.C.S. article 6252-9b: the Elimination of Architectural Barriers Advisory Committee, the Air Conditioning and Refrigeration Contractors Advisory Board, the Texas Industrialized Building Code Council, the Auctioneer Education Advisory Board, the Board of Boiler Rules, and the Property Tax Consultants Advisory Council. Article 6252-9b requires "every state officer" to file an annual financial disclosure statement. *See* V.T.C.S. art. 6252-9b, § 3(a); [Ethics Advisory Opinion No. 1](#) (1992). Some of the members of these bodies are ex-officio members who must file financial statements for their service as "state officers" in other capacities. The issue here is whether other members of these bodies must file financial statements.

The state officers who must file financial disclosure statements include "appointed officers." V.T.C.S. art. 6252-9b, § 2(1). "Appointed officer" for purposes of article 6252-9b 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, excluding a person appointed to fill a vacancy in an elective office.

Id. § 2(3)(C).¹ The members of the Elimination of Architectural Barriers Advisory Committee do not fit within this definition because they serve at the will of the Texas Commission of Licensing and Regulation. V.T.C.S. art. 9102, § 7. Members of this committee therefore do not have to file annual financial disclosure statements. *Id.* art. 6252-9b, § 2(1), (3); *see* [Ethics Advisory Opinion No. 121](#) (members who serve at the pleasure of the appointing officers).

Members of the other governmental bodies are appointed for terms set by statute. The critical issue in regard to members of the other bodies is whether the appointees are officers of a "state agency." Section 2(8)(A) of article 6252-9b, V.T.C.S., defines a "state agency" as any department, commission, board, office or other agency² that:

- (i) is in the executive branch of state government;
- (ii) has authority that is not limited to a geographical portion of the state; and
- (iii) was created by the constitution or a statute of this state.

Under this definition, if an executive branch entity does not wield actual "authority," it does not fall within the definition of a state agency for purposes of article 6252-9b. *See* [Ethics Advisory Opinions Nos. 27, 26](#) (1992). Appointed members of bodies that are not "state agencies" are not required to file financial disclosure statements.

The Air Conditioning and Refrigeration Contractors Advisory Board was "created to advise the commissioner [of licensing and regulation] in adopting rules and enforcing and administering this Act and to advise the [Texas Commission of Licensing and Regulation] in setting fees." V.T.C.S. art. 8861, § 3A(a). The board functions in a purely advisory capacity, with no requirement that the commissioner act on the board's advice. Therefore the board is not a state agency for purposes of article 6252-9b, and the members of the board are not required to file annual financial disclosure statements.

The Texas Industrialized Building Code Council has authority to resolve all questions raised by municipalities about design plans and specifications of industrialized buildings. V.T.C.S. art. 5221f-1, § 5(h). The council may require amendments to the Uniform Building Code group or the Standard Building Code group, which are applied statewide. *Id.* § 5(i). The council determines questions about code equivalence, materials, and methods of construction. *Id.* § 5(j). The council must approve all third-party inspectors and design review agencies. *Id.* § 5(f). The council's stamp of approval is required on various plans and designs. *Id.* § 5(k). The Texas Industrialized Building Code Council's decisions are binding on the Texas Department of Licensing and Regulation and other entities. Section 5(m) of article 5221f-1, V.T.C.S., provides:

The commissioner [of licensing and regulation] *shall* adopt rules as may be necessary to implement the actions and decisions of the council. The decisions, actions, and interpretations of the council are binding on the [Texas Department of Licensing and Regulation], third-party inspectors, design review agencies, and municipalities and other local political subdivisions. (Emphasis added.)

The council exercises actual "authority" and is a state agency within the article 6252-9b definition. Therefore council members are state officers required to file annual financial disclosure statements.

The Auctioneer Education Advisory Board was created "to advise the commissioner [of licensing and regulation] on educational matters." V.T.C.S. art. 8700, § 5B(a). The board evaluates educational programs and makes recommendations. The commissioner of licensing and regulation "may fund or underwrite" these programs based on the board's recommendations. *Id.* § 5B(j). The board functions in a purely advisory capacity, with no actual "authority." Members of the Auctioneer Education Advisory Board are therefore not required to file annual financial disclosure statements.

The Board of Boiler Rules "shall advise the commissioner [of licensing and regulation] in the adoption of definitions and rules relating to the safe construction, installation, inspection, operating limits, alteration, and repair of boilers and their appurtenances." Health & Safety Code § 755.017. The board gives advice, but wields no actual authority. None of the board's suggestions are binding on the commission. It is not a state agency for purposes of article 6252-9b, and none of the board members are required to file annual financial disclosure statements.

The Property Tax Consultants Advisory Council has the following duties:

- (1) *recommend* to the commissioner [of licensing and regulation] standards of practice, conduct, and ethics for registrants to be adopted under this article;
- (2) *recommend* to the [Texas Commission of Licensing and Regulation] amounts for the fees it may set under this article;
- (3) *recommend* to the commissioner contents for the senior property tax consultant registration examination and standards of acceptable performance;
- (4) *assist and advise* the commissioner in recognizing continuing education programs and educational courses for the registrants; and
- (5) *advise* the commissioner in establishing educational requirements for initial applicants.

V.T.C.S. art. 8886, § 10(e) (emphasis added). The council has purely advisory functions. None of its duties are binding on the commission or the department. Because the council functions in this capacity, it has no actual "authority." Its members are therefore not state officers for purposes of article 6252-9b and are not required to file annual financial disclosure statements.

SUMMARY

The members of the Elimination of Architectural Barriers Advisory Committee are not required to file annual financial disclosure statements. The members of the Air Conditioning and Refrigeration Contractors Advisory Board are not required to file annual financial disclosure statements. The members of the Texas Industrialized Building Code Council are required to file annual financial disclosure statements. The members of the Auctioneer Education Advisory Board are not required to file annual financial disclosure statements. The members of the Board of Boiler Rules are not required to file annual financial disclosure statements. The members of the Property Tax Consultants Advisory Council are not required to file annual financial disclosure statements.

¹ Section 2(3) of article 6252-9b also defines an appointed officer as: (A) the secretary of state; (B) an individual appointed with the advice and consent of the senate to the governing board of any state-supported institution of higher education; . . . (D) a person who is not otherwise within the definition of elected officer, appointed officer, or executive head of a state agency, but who holds a position as a member of the governing board or commission of a state agency acquired through a method other than appointment. However, none of these other definitions of an appointed state officer are applicable to the members whose filing requirements are at issue.

² Included in the definition of "state agency" are river authorities and certain institutions of higher learning. Neither definition is applicable in this situation.