



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 127

April 1, 1993

Whether an employee or a member of the board of trustees of a municipal retirement system created under V.T.C.S. article 6243n may be required to register as a lobbyist under chapter 305 of the Government Code. (AOR-128)

The Texas Ethics Commission has been asked to consider whether an employee or a member of the board of trustees of a municipal retirement system created under V.T.C.S. article 6243n may be required to register as a lobbyist under chapter 305 of the Government Code.

A person is required to register as a lobbyist if the person either makes expenditures of more than \$200 or receives compensation or reimbursement of more than \$200 in a calendar quarter in connection with communications to members of the legislative or executive branch of state government to influence legislation or administrative action. Gov't Code § 305.003(a); 17 Tex. Reg. 4444 (to be codified at title 1, sections 40.1 and 40.3, of the Texas Administrative Code); *see* Gov't Code § 305.002(7) (defining "member of the legislative branch" to include employees of the legislature). Members of the board of a municipal retirement system created under article 6243f receive no compensation for their service. V.T.C.S. art. 6243n, § 4(d). Therefore, a board member would not be required to register under the compensation threshold even if he communicated with members of the legislative branch to influence legislation. At least one employee of the municipal retirement system in question, however, receives compensation to communicate with members of the legislative branch to influence legislation. Therefore, the question to be considered is whether that employee may be required to register as a lobbyist.¹

There is an exception from required lobby registration for officers and employees of the three branches of state government and for officers and employees of political subdivisions of the state. Gov't Code § 305.003(b); 17 Tex. Reg. 6893 (to be codified at title 1, sections 40.5 and 40.7, of the Texas Administrative Code); *see Ethics Advisory Opinions Nos. 112, 101, 73* (1992). Whether this exception applies in this instance depends on whether a municipal retirement system created under article 6243n is a political subdivision. *See generally Ethics Advisory Opinion No. 9* (1992) (nonprofit water supply corporations are not political subdivisions for purposes of lobby statute).

In *Bolen v. Board of Firemen, Policemen & Fire Alarm Operators' Trustees of San Antonio*, 308 S.W.2d 904 (Tex. Civ. App.--San Antonio 1957, writ ref'd), the court considered whether the board of a pension fund created under V.T.C.S. article 6243f was a political subdivision for purposes of various constitutional provisions. The court wrote:

The Board is not the State, nor is it a county, a city, a town or any other political corporation or subdivision of the State. The Board is simply a group of statutory trustees charged with the management of the Pension Funds

It is true that the city pays money into this trust fund, but once it is paid into the fund the city loses control over it and it no longer belongs to the city.

The Board just simply is not a political corporation nor a political subdivision of the State. It does not have any of the attributes of a political subdivision. A political subdivision contemplates: geographical area and boundaries, public elections, public officials, taxing power and a general public purpose or benefit. The Board has none of these attributes.

Id. at 905; *see also State v. \$50,600.00*, 800 S.W.2d 872, 878-79 (Tex. App.--San Antonio 1990, writ denied) (holding that county sheriff's department is not a political subdivision for purposes of the Texas Controlled Substances Act because it did not have *all* the attributes ascribed to a political subdivision under *Bolen*). *Cf.* Attorney General Opinions JM-291 (1984) (board of trustees of pension board is a "local governmental entity" for purposes of law governing conflicts of interest), MW-506 (1982) (pension fund created under V.T.C.S. art. 6243e is a "governmental body" for purposes of Open Meetings Act).

A municipal retirement system created under article 6243n is similar to the retirement system created under article 6243f considered in *Bolen*. It is a group of statutory trustees charged with the management of a pension fund established for the benefit of city employees. *See* V.T.C.S. art. 6243n, § 4(b) (prescribing membership of board of trustees). The board of trustees of the retirement system, not the governing body of the city, controls the fund. *Id.* ¶¶ 4, 10. In light of *Bolen*, therefore, we conclude that a municipal retirement system established under article 6243n is not a political subdivision for purposes of the lobby statute, and that an employee of such a retirement system is not covered by the exception from required lobby registration that is set out in section 305.003(b) of the Government Code. *Cf. Amalgamated Transit Union, Local Div. 1338 v. Dallas Pub. Transit Bd.*, 430 S.W.2d 107, 113-14 (Tex. Civ. App.--Dallas 1968), *cert. denied*, 396 US 838 (1969) (holding that board of trustees for pension fund of city's transit system was an agency of the city and therefore a political subdivision for purposes of article 5154c; distinguishing the board from the type of board discussed in *Bolen* because it was created by city ordinance and city had ultimate authority in ownership, control, and operation of the system). Thus, an employee of a municipal retirement system created under article 6243n who meets the compensation threshold may be required to register as a lobbyist unless the employee's communications are covered by one or more other exceptions.²

SUMMARY

An employee of a municipal retirement system created under V.T.C.S. article 6243n is not an employee of a political subdivision and may therefore be required to register as a lobbyist under chapter 305 of the Government Code.

¹ The request letter does not describe any lobby expenditures. Therefore, this opinion does not consider whether an officer or employee of the retirement system may be required to register under the expenditure threshold.

² A person is not required to register under the compensation threshold if communication to influence legislation or administrative action makes up, during a calendar quarter, no more than five percent of the activities and duties for which the person receives compensation. 1 T.A.C. § 40.3(c) - (e); *see generally* Gov't Code § 305.004; 17 Tex. Reg. 6893 (to be codified at title 1, sections 40.5 and 40.7, of the Texas Administrative Code) (exceptions to required lobby registration).