



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 137

April 1, 1993

Whether a designated representative of an ex officio nonvoting member of the Texas Board of Licensure for Nursing Home Administrators is required to file an annual financial disclosure statement. (AOR-156)

The Texas Ethics Commission has been asked to consider whether a designated representative of an ex officio nonvoting member of the Texas Board of Licensure for Nursing Home Administrators is required to file an annual financial disclosure statement under article 6252-9b, V.T.C.S. Every "state officer" must file a financial disclosure statement with the commission "on or before April 30th of each year." V.T.C.S. art. 6252-9b, § 3.

Section 2(1) of article 6252-9b defines a "state officer" as "an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency as defined in this section." The Texas Board of Licensure for Nursing Home Administrators is a major state agency for purposes of article 6252-9b. *See id.* § 2(5)(A)(xxx). The voting members of the Texas Board of Licensure for Nursing Home Administrators (hereinafter "the board") are clearly appointed "officers" of a major state agency and are therefore required to file annual financial disclosure statements under section 2(3)(C) of article 6252-9b. *See Ethics Advisory Opinion No. 28* (1992).

In addition to the voting members of the board, the statute establishing the board states there are to be three ex officio¹ nonvoting members of the board:

The Commissioner of Human Services, or his designee, the Commissioner of Health, or his designee, and the Executive Director of the Texas Department on Aging, or his designee, shall be ex officio nonvoting members of the board.

V.T.C.S. art. 4442d, § 3(1). The question here is whether a person is required to file a financial statement because of his or her service as a designated representative of an ex officio nonvoting member.²

The Ethics Commission has stated that a designated representative of a voting member of a state agency is required to file a financial statement as an appointed officer of a state agency under article 6252-9b. *Ethics Advisory Opinion No. 27* (1992). The reasoning underlying that conclusion was that the designated representatives of the board in question functioned in the same capacity as a regular member and actually exercised governmental authority. Such designees are different from the designees of ex officio nonvoting members at issue here. The ex officio nonvoting members and, by extension, their designees, do not have voting power and are not counted in a quorum. Attorney General Opinion DM-160 (1992). The attorney general has said that nonvoting members of the board are "unqualified to transact business on behalf of [the board]." *Id.* Because the designated representatives of ex officio nonvoting members do not exercise governmental authority, we conclude that they are not "state officers" for purposes of article 6252-9b and are not required to file annual financial disclosure statements. *See Aldine Indep. School Dist. v. Standley*, 280 S.W.2d 578, 583 (Tex. 1955) ("Public officer" is one who exercises some function of government largely independent of others' control).

SUMMARY

A designated representative of an ex officio nonvoting member of the Texas Board of Licensure for Nursing Home Administrators is not required to file an annual financial disclosure statement.

¹ In some instances, a public officer, by virtue of the fact that he holds the office to which he or she was elected or appointed, is authorized and required to exercise the powers and duties of another office. In these cases the officer is said to act ex officio. See 60 Tex.Jur. 3d Public Officers and Employees § 15 (1988).

² The ex officio members are required to file annual financial statements by virtue of their particular offices. Therefore, the only issue raised by the request is whether their designees on the board are required to file.