




TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****  **Opinion History**

ETHICS ADVISORY OPINION NO. 159

July 19, 1993

The application of the lobby registration law to members of a law firm representing a corporation in connection with the award of a bid and the execution of a contract with the Department of Insurance to be a Special Deputy Receiver (SDR) for a failed insurance company. (AOR-142)

A law firm has asked about the application of the lobby registration law to members of a law firm representing a corporation that has contracted with the Department of Insurance (the department) to be a Special Deputy Receiver (SDR) for a failed insurance company. *See* Ins. Code art. 21.28, § 12(b) (commissioner may appoint, set compensation of, and contract with qualified special deputy receivers to act for the commissioner). The legal representation first involved advising and assisting the corporation in responding to a bid solicitation package from the Department of Insurance for the award of a contract to be an SDR. After the contract was awarded to the corporation, members of the firm engaged in various communications with department staff members, including communications with the department's contractor oversight office. The question raised is whether any of these communications require members of the law firm to register as lobbyists.

A person is required to register as a lobbyist if the person either expends more than \$200 or is compensated or reimbursed more than \$200 in a calendar quarter to communicate directly with a member of the executive branch to influence administrative action.¹ Gov't Code § 305.003(a); *see id.* § 305.002(1), (2) (defining, respectively, "administrative action" and "direct communication"). For purposes of determining whether a person is required to register *under the compensation threshold*, purchasing decisions do not constitute administrative action. 18Tex. Reg. 4299 (1993) (to be codified at title 1, new section 40.5(c), of the Texas Administrative Code). A decision to accept a bid and award a contract is a purchasing decision for purposes of that rule. Therefore communications to influence a decision about acceptance of a bid and award of a contract do not subject a person to registration under the compensation threshold. Thus, a lawyer who receives compensation for communications in connection with the response to a bid solicitation is not required to register as a lobbyist on the basis of such communications.

The other type of communication in question here is communication with Department of Insurance personnel about compliance with the contract once it is awarded.² Such communications are also likely to be among the types of communications, under Ethics Commission rules, that have been excepted from the definition of communications to influence administrative action *for purposes of the compensation threshold*. 18 Tex. Reg. 4299 (1993), 17 Tex. Reg. 6893 (1992) (to be codified at title 1, sections 40.5 and 40.7, of the Texas Administrative Code).³

One exception that might apply in this context is an exception for

the mere preparation or submission of an application or other written document providing information required by law, including statute, rule[,] regulation, order, subpoena, or responses to documents prepared by a state agency.

17 Tex. Reg. 6893 (1992) (Lobby Rule 40.7(a)(1)). There is also an exception for

direct communication for the purpose of compliance with existing laws, administrative rules, policies, and procedures, including communication to show qualification for an exception of general applicability available under existing administrative rules, policies and procedures.

Id. (Lobby Rule 40.7(a)(8)); see [Ethics Advisory Opinions Nos. 98, 16, 15, 14](#) (1992). Another exception covers communications to obtain information, if there is no attempt to influence administrative action. *Id.* (Lobby Rule 40.7(a)(2)). Communications covered by an exception do not, by themselves, require lobby registration.

SUMMARY

A lawyer who receives compensation for communications in connection with a response to a bid solicitation is not required to register as a lobbyist on the basis of such communications.

¹ The request letter mentions no lobby expenditures. Therefore, this opinion considers only whether the corporation's payments to the law firm may require individual lawyers to register as lobbyists.

² The requestor contends members of the law firm are exempt from lobby registration under the exemption for state officers and employees. See Gov't Code § 305.003(b). We disagree for two reasons. First, the SDR acts in the position of the insolvent insurance company and not the department of insurance. *Eagle Life Ins. Co. v. Hernandez*, 743 S.W.2d 671 (Tex. App.--El Paso 1987, writ denied). *Eagle Life* dealt with a "liquidator" under article 21.28 of the Insurance Code. The term "liquidator" includes an SDR. Ins. Code art. 21.28, § 1(d). Also, even if the SDR were considered part of the state government, the exception for state officers and employees would not extend to members of a law firm hired by the SDR.

³ The exceptions set out in rules 40.5 and 40.7 apply only to the compensation threshold, not to the expenditure threshold. Because the request letter mentions no lobby expenditures, this opinion considers only the application of the compensation threshold.