



# TEXAS ETHICS COMMISSION



**\*\*Overruled, Modified, Clarified, or Superseded\*\***  **Opinion History**

## ETHICS ADVISORY OPINION NO. 160

*July 19, 1993*

*Whether direct communications between an investment banker and state agency personnel or board members may be lobby communications. (AOR-160)*

The Texas Ethics Commission has been asked whether direct communications between an investment banker and state agency personnel or board members may be lobby communications. The request letter describes direct communications regarding the agency's selection of an investment banker to provide services to the agency.

Under the provisions of Government Code chapter 305, a person is required to register as a lobbyist if that person crosses either an expenditure or compensation threshold. A person must register under the expenditure threshold if he spends more than \$200 in a calendar quarter on certain activities to directly communicate with members of the legislative or executive branch to influence legislation or administrative action.<sup>1</sup> Registration is required under the compensation threshold if a person is compensated or reimbursed more than \$200 in a calendar quarter to directly communicate to influence legislation or administrative action.<sup>2</sup> Gov't Code § 305.003(a).

In the situation described, an investment banker is receiving compensation to communicate with members of the executive branch to influence an agency's action in selecting a service provider. By rule the commission has provided that registration as a lobbyist is not required when a person is compensated to communicate regarding state agency purchasing decisions:

For purposes of the compensation threshold of the Government Code, § 305.003(a)(2), "administrative action" does not include the purchasing decisions of a state agency or the negotiations regarding those decisions. This exception, however, does not effect registration requirements under the expenditure threshold.

18 Tex. Reg. 4299 (1993) (to be codified at title 1, new section 40.5(c), of the Texas Administrative Code). For purposes of this rule, the selection of a service provider is a purchasing decision. This rule would exempt an investment banker from registration under the compensation threshold for lobby registration. However, if the banker triggered the expenditure threshold, he would be required to register as a lobbyist with the Texas Ethics Commission. *See Ethics Advisory Opinion No. 158* (1993).

### SUMMARY

Lobby Rule 40.5(c) provides an exemption from lobby registration under the *compensation threshold* for a person who is compensated more than \$200 in a calendar quarter to influence a state agency in its selection of an investment banker.

<sup>1</sup> Expenditures on the following activities to communicate with members of the legislative or executive branches to influence legislation or administrative action are included in the expenditure threshold amount: (1) transportation and lodging; (2) food and beverages; (3) entertainment; (4) gifts, other than awards and mementos; (5) awards and mementos; and (6) expenditures made for the attendance of members of the legislative or executive branch at political fund-raisers or charity events. Gov't Code § § 305.003(a)(1), 305.006(b).

<sup>2</sup> Expenditures and reimbursement for a person's own membership dues, transportation, and lodging are not included in either registration threshold.