



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 174

November 18, 1993

Whether a senator may serve on the board of trustees of a private college. (AOR-193)

The Texas Ethics Commission has been asked whether it would be a violation of any of the laws interpreted by the Ethics Commission for a state senator to serve as trustee on the board of a private college. The requestor states that the college is a private institution, but that it does receive state-funded tuition equalization grants.

Section 572.053 of the Government Code states that "a member of the legislature may not vote on a measure or a bill, other than a measure that will affect an entire class of business entities, that will directly benefit a specific business transaction of a business entity in which the member has a controlling interest." "Controlling interest" includes "membership on the board of directors or other governing body of the business entity." Gov't Code § 572.053(b)(2).

In this situation, the senator wishes to be a trustee on the board of a private college receiving state-funded tuition equalization grants.¹ Tuition equalization grants are appropriated by the legislature and administered by the Coordinating Board, Texas College and University System.² A private college or institution makes an application to the Coordinating Board for the grants and receives them subject to its agreement to comply with the statutes, rules, and regulations applicable to the grant. The Coordinating Board may only approve "such private or independent colleges . . . which meet program standards and accreditation comparable to public institutions." See 19 T.A.C. § 21.124.

The legislative appropriation for this program affects all of the private colleges and universities receiving tuition equalization grants, an entire class of business entities. Thus a senator, if also a trustee of a private college, would not be prohibited from voting on the appropriation of tuition equalization grants.^{3, 4}

SUMMARY

The laws subject to interpretation by the Ethics Commission do not prohibit a senator from serving as a trustee on the board of a private college that receives state-funded tuition equalization grants. However, a legislator is governed by the laws regarding conflicts of interest that are set out in Government Code chapter 572 and is subject to the restrictions that those laws impose.

¹ Although the Ethics Commission does not have authority to interpret the Texas Constitution, we note there are two sections that specifically refer to dual office holding and conflict of interest. Section 40 of article 16 of the Texas Constitution states, "No member of the Legislature of this State may hold any other office or position of profit under this State, or the United States, except as a notary public if qualified by law." Section 18 of article 3 of the Texas Constitution bars legislators from contracting with the state if they were members of the legislature when the appropriation providing funds for the contract was enacted. See Attorney General Opinion JM-782 (1987).

² The Coordinating Board is an agency of the state that consists of 18 members appointed by the governor, with the advice and consent of the senate. Educ. Code § 61.022. The Coordinating Board "is authorized to provide tuition equalization grants to Texas residents enrolled in any approved private Texas college or university, based on student financial need, but not to exceed a grant amount of more than that specified in the appropriation by the legislature." Educ. Code § 61.221.

³ We assume that the senator is not being compensated for this position. If he is being compensated, he should be aware of sections 36.08(f) and 36.10(a), under which a member of the legislature may not accept payment for performing services in his or her capacity as a public servant, and section 36.07(a) of the Penal Code, which prohibits honoraria in certain circumstances.

⁴ If the legislature should ever vote on a bill that directly benefits the private college in question, the application of section 572.053 would depend on whether the private college is a "business entity" for purposes of section 572.053. A "business entity," for purposes of that section, is any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust.