



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 179

*January 27, 1994*

*Whether the revolving door and recusal provisions of chapter 572 of the Government Code apply to members of the Texas Certified Self-Insurer Guaranty Association. (AOR-175)*

The Texas Ethics Commission has been asked about the applicability of several provisions of chapter 572 of the Government Code<sup>1</sup> to the Texas Certified Self-Insurer Guaranty Association (TCSGA) board of directors. The legislature created TCSGA to provide for "the payment of workers' compensation insurance benefits for the injured employees of an impaired employer." Labor Code § 407.121. An employer who desires to become a certified self-insurer must be a member of the association. *Id.*

The TCSGA board is made up of two certified self-insurer members of TCSGA elected to the board by TCSGA's membership, two members of the Workers' Compensation Commission, the executive director of the Workers' Compensation Commission, the public counsel of the office of public insurance counsel, and the director of the division of self-insurance regulation in the Texas Workers' Compensation Commission. *Id.* § 407.122. The director of the division of self-insurance regulation participates as a nonvoting member. *Id.*

The requestor first asks whether members of the TCSGA board are subject to the recusal provisions of Government Code section 572.058. Section 572.058(a) provides in part:

An elected or appointed [state] officer . . . who is a member of a board or commission having policy direction over a state agency and who has a personal or private interest in a measure, proposal, or decision pending before the board or commission shall publicly disclose the fact to the board or commission in a meeting called and held in compliance with [the Open Meetings Act]. The officer may not vote or otherwise participate in the decision.

Whether section 572.058 is applicable depends on whether the TCSGA board members are "state officers" who have policy direction over a "state agency."

In [Ethics Advisory Opinion No. 142](#) (1993), we considered whether TCSGA board members are "state officers" for purposes of chapter 572 of the Government Code and therefore required to file annual financial disclosure statements. The opinion noted that the two board members who are members of the Workers' Compensation Commission, the board member who is the executive director of the Workers' Compensation Commission, and the board member who is the public counsel of the office of public insurance counsel are "state officers" because of the positions that make them *ex officio* members of the TCSGA board. Those members are therefore required to file financial statements because of those positions. The opinion concluded that the other members of the TCSGA board--the self-insurer members and the director of the division of self-insurance regulation in the Texas Workers' Compensation Commission--did not meet the statutory definition of "state officer."

Since the self-insurer members and the director of the division of self-insurance regulation are not "state officers," the recusal requirements of section 572.058 do not apply to those members. Because the other members of the TCSGA are state officers, however, we must determine whether the recusal requirements of section 572.058 apply to them in their capacity as members of the TCSGA board.

The recusal requirements are applicable to a state officer "who is a member of a board or commission having policy direction over a state agency." The issue, then, is whether TCSGA is a state agency. One part of the definition of a "state agency" is that it is in the executive branch of state government. Gov't Code § 572.002(10). We do not think that TCSGA is part of the executive branch of state government. Although the TCSGA is statutorily created, its members are private employers who desire to become certified self-insurers for purposes of workers' compensation benefits for their employees. Labor Code § 407.121. TCSGA receives no state appropriated funds. In dealing with claims, it acts in the capacity of an impaired employer. *See, e.g., id.* §§ 407.127, 407.130. Although the TCSGA board may adopt rules for the operation of the association, the rules are subject to approval of the Texas Workers' Compensation Commission. *Id.* § 407.123. In light of these features of the TCSGA, we do not think the legislature intended that TCSGA be considered part of the executive branch of state government.<sup>2</sup> Therefore, because TCSGA is not a state agency for purposes of chapter 572, the requirements of section 572.058(a) do not apply to state officers who are members of the TCSGA board when they are acting in their capacity as TCSGA board members.

The requestor next asks whether section 572.054 of the Government Code, the revolving door prohibition, applies to the self-insurer members of the TCSGA board. The revolving door prohibition is applicable to former officers and employees of a regulatory agency. A regulatory agency is a state agency with statutory authority to engage in regulation. Gov't Code § 572.002(8). Because we have determined that the TCSGA is not a state agency for purposes of chapter 572, the revolving door prohibition is inapplicable to the self-insurer members of the TCSGA board.

### SUMMARY

The Texas Certified Self-Insurer Guaranty Association (TCSGA) is not a state agency for purposes of chapter 572 of the Government Code.

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<sup>1</sup> Formerly article 6252-9b, V.T.C.S.

<sup>2</sup> Because TCSGA is created by statute and because certain state officers serve as ex officio board members, TCSGA has certain features in common with a state agency. Consequently, it may be appropriate that such a quasi-governmental body be subject to certain restrictions applicable to other state agencies. We note that frequently the legislature has made specific quasi-governmental bodies subject to various statutes applicable to state agencies or other governmental bodies. *See, e.g.,* Gov't Code § 552.003(a)(9), (10) (special entities included in definition of "governmental body" for purposes of the Open Records Act); Ins. Code art. 21.28C, § 7(e) (requiring financial statements of board members of the Texas Property & Casualty Insurance Guaranty Association). In the case of TCSGA, the legislature has made no such provisions.