



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 180

January 27, 1994

Whether members of the Texas Peace Officers' Memorial Advisory Committee (POMAC) are required to file annual financial disclosure statements under chapter 572 of the Government Code. (AOR-195)

The Texas Ethics Commission has been asked whether members of the Texas Peace Officers' Memorial Advisory Committee (POMAC) are required to file annual financial disclosure statements under chapter 572 of the Government Code.¹ In [Ethics Advisory Opinion No. 138](#) (1993) the Ethics Commission determined that POMAC members were not required to file financial statements because they did not meet the definition of "appointed officer" for purposes of the law requiring financial disclosure of state officers. The Ethics Commission has been asked to review that opinion because of recent changes in the law concerning the organization and duties of POMAC. *See* S.B. 327, Acts 1993, 73d Leg., ch. 348, at 1558-60 (amending sections 415.112 - 415.122 of the Government Code).

For purposes of chapter 572 of the Government Code, an "appointed officer" includes "an officer of a state agency who is appointed for a term of office specified by the Texas Constitution or a statute of this state." Gov't Code § 572.002(1)(C). A "state agency" includes an office, board, commission, department, or other agency created by statute that is in the executive branch of state government and that has *authority* not limited to a geographical portion of the state. *Id.* § 572.002(10)(A).

Before the recent amendment to sections 415.112 through 415.122 of the Government Code, members of POMAC served at the pleasure of the authority who appointed them, not for a set term. Thus the members did not meet the definition of "appointed officer." [Ethics Advisory Opinion No. 138](#) at 2. Under the new law, the composition of POMAC includes: four persons appointed by the governor; nine persons appointed by the Commission on Law Enforcement Officer Standards and Education; and three state officers who serve as nonvoting ex officio members. Gov't Code § 415.113. Appointed members serve two-year terms that expire February 1 of each odd-numbered year. *Id.* § 415.115. Thus members of POMAC now meet the definition of appointed officer under chapter 572 of the Government Code.

The remaining issue to consider is whether POMAC is a state agency that exercises governmental authority. If a governmental body has only advisory authority, it does not fall within the chapter 572 definition of a state agency. [Ethics Advisory Opinions Nos. 124](#) (1993), [26](#) (1992). POMAC is responsible for advising the Commission on Law Enforcement Officer Standards and Education on issues related to "the funding, design, construction, maintenance, and management of the Texas peace officers' memorial." Gov't Code § 415.117. Most of POMAC's duties require the approval of the State Preservation Board, the General Services Commission, or the Architect of the Capitol. However, POMAC may solicit contributions to fund the memorial project and may select individuals or organizations to provide fundraising services. *Id.* subsecs. (2), (5). All funds contributed to the memorial are deposited in the state treasury to be used only by POMAC in carrying out its duties. *Id.* § 415.120. Because POMAC members have discretionary use over state funds, they exercise actual authority. Therefore, POMAC is a state agency for purposes of chapter 572 and its members are required to file annual financial disclosure statements.

SUMMARY

Members of POMAC are appointed officers of a state agency who are required to file annual financial disclosure statements. [Ethics Advisory Opinion No. 138](#) (1993) is superseded, in part, by statute.

¹ Formerly article 6252-9b, V.T.C.S.