



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****  **Opinion History**

ETHICS ADVISORY OPINION NO. 194

March 25, 1994

Whether a legislator who has either a "controlling interest or substantial interest in a broker-dealer" may represent the broker-dealer before a state agency even if the legislator is not paid specifically for that representation. (AOR-218)

The Texas Ethics Commission has been asked whether a legislator who has either a "controlling interest or substantial interest in a broker-dealer" may represent the broker-dealer before a state agency even if the legislator is not paid specifically for the representation. The requestor also asks if the broker-dealer is itself prohibited or restricted from doing business with a state agency because of the legislator's interest.

Section 572.052 of the Government Code provides that a legislator may not represent a person or business entity for compensation before a state agency unless the representation is in a public hearing that is a matter of record or involves only ministerial acts on the part of the agency, such as the filing of documents. Under this provision, a member of the legislature who has an ownership interest in a business entity may receive compensation for representing that business entity before a state agency on ministerial matters or in a public hearing that is a matter of record. *See generally* Gov't Code § 572.025 (a legislator who receives compensation to represent another before a state agency must report on an annual personal financial statement the name of the agency, the person represented, and the category amount of compensation received for that representation). The question here is whether a legislator with an ownership interest in a business entity may represent the business entity in nonministerial matters in a context that is not part of the public record. The legal issue is whether an ownership interest amounts to "compensation" for purpose of section 572.052.

Chapter 572 of the Government Code does not define the term "compensation." Nor do we find any guidance on this question in the Texas case law. The *American Heritage Dictionary* defines "compensation" as "[s]omething, such as money, given or received as payment or reparation, as for a service or loss." *American Heritage Dictionary* 385 (3d ed. 1992). This definition supports our view that "compensation" is usually thought of as something tied directly to the provision of service. Generally the benefits of ownership are not thought of as compensation. On the other hand, a person may receive an ownership interest itself as compensation for services provided or to be provided. Therefore, whether a particular situation involves compensation for representation before a state agency depends on the exact nature of a specific financial arrangement. Consequently, we recommend that a legislator exercise caution before representing a business entity in which he has an ownership interest before a state agency on nonministerial matters that are not part of the public record.

The second question is whether the broker-dealer is prohibited or restricted from doing business with a state agency because of the legislator's interest. The provision discussed above, section 572.052, applies only to an individual legislator, not to a business in which a legislator has an interest. *See Ethics Advisory Opinion No. 117* (1993). A different provision, section 572.057, restricts the activity of a business entity in which a legislator has a substantial interest. Specifically, it prohibits a legislator or a business entity in which a legislator has a substantial interest from leasing any office space or other real property to "the state, a state agency, the legislature or a legislative agency, the Supreme Court of Texas, the Court of Criminal Appeals, or a state judicial

agency." Gov't Code § 572.057(a); *see id.* § 572.005 (determination of substantial interest). Any such lease is automatically void. *Id.* § 572.057(b).¹

SUMMARY

Whether a particular situation involves compensation for representation before a state agency for purposes of section 572.052 of the Government Code depends on the exact nature of a specific financial arrangement.

¹ This prohibition does not apply to an individual who is an elected officer on June 16, 1989, and continuing until the officer no longer holds that office. Gov't Code § 572.057(c).