



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 213

June 10, 1994

Scope of section 572.055 of the Government Code. (AOR-236)

The Texas Ethics Commission has been asked to interpret section 572.055 of the Government Code, which provides as follows:

- (a) An association or organization of employees of a regulatory agency may not solicit, accept, or agree to accept anything of value from a business entity regulated by that agency and from which the business entity must obtain a permit to operate that business in this state or from an individual directly or indirectly connected with that business entity.
- (b) A business entity regulated by a regulatory agency and from which the business entity must obtain a permit to operate that business in this state or an individual directly or indirectly connected with that business entity may not offer, confer, or agree to confer on an association or organization of employees of that agency anything of value.
- (c) This section does not apply to an agency regulating the operation or inspection of motor vehicles or an agency charged with enforcing the parks and wildlife laws of this state.
- (d) A person commits an offense if the person intentionally or knowingly violates this section. An offense under this subsection is a Class A misdemeanor.

In short, section 572.055 restricts an organization made up of employees of a regulatory agency from seeking or obtaining donations from a business entity that must obtain a permit from the regulatory agency. Further, it restricts an organization made up of employees of a regulatory agency from seeking or obtaining donations from an individual directly or indirectly connected to a business entity that must obtain a permit from the regulatory agency.

The requestor asks whether the restriction applies to the following types of entities and individuals:

- (1) Banks or financial institutions holding notes on business loans to persons directly involved in the regulated trade.
- (2) A firm with title to property on which there is a permitted establishment that is owned and operated by another person or business entity.
- (3) A business entity whose operation includes a permitted site that is incidental to the business entity's principal trade.
- (4) A non-permitted outlet or branch facility of a business that holds permits at other locations.
- (5) A charity or nonprofit business.
- (6) Customers of permitted businesses.

Presumably it will be clear whether a business entity must obtain a permit from a regulatory agency. The restriction always applies to donations from those business entities.¹ The second part of the restriction presents a more difficult issue: whether a person is an "individual" who is "directly or indirectly connected" with a business entity that must obtain a permit from the regulatory agency.

First, we must determine the statutory meaning of the term "individual." Generally, "individual" means a natural person, although the term sometimes includes artificial persons such as corporations. Black's Law Dictionary 533 (6th ed. 1991). Although "individual" is not defined in chapter 572, the term is used in other sections of chapter 572 to refer to natural persons. For example, one section refers to "an individual" appointed to a state board. Gov't Code § 572.002(1)(B); *see also id.* § 572.002(7) ("person" is an individual or business entity). We conclude that "individual" in section 572.055 means a natural person. Thus the second part of the restriction set out in section 572.055 only applies to *natural persons* who are directly or indirectly connected with a business that must obtain a permit from a regulatory agency. The restriction does not apply to artificial persons such as corporations.

In determining whether an individual is "directly or indirectly connected" to a business entity, we start with the principle that the owners and employees of permitted businesses are individuals directly connected with that business entity. With regard to other individuals, such as landlords, suppliers, and creditors of a permitted business, we think the statutory prohibition is intended to apply to individuals exercising something akin to an equity interest in the permitted business, however this interest may be formally characterized. For example, a creditor who participates in a share of the profits of the permitted business or whose right to payment depends on the profits of the permitted business would be in the prohibited class. On the other hand, a creditor such as a landlord whose right to payment is not tied to the profits of the permitted business would not be within the prohibited class.

Furthermore, we think it would be overbroad to include customers of a permitted business as "individuals directly or indirectly connected" with that business. Therefore the restriction in section 572.055 of the Government Code does not apply to customers of a business entity.

SUMMARY

The term "individual" in section 572.055 of the Government Code means a natural person and does not include artificial persons.

The restriction in section 572.055 that applies to an individual "directly or indirectly connected to" a business entity applies to owners and employees of a business entity and to creditors whose right to payment depends on the profits of the business. The restriction does not apply to customers of a business entity.

¹ "Business entity" means "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." Gov't Code § 572.002(2). Therefore the restriction does not apply to a nonprofit entity.

Also, we think the restriction applies to all parts of a single business entity, even if permitted activity is only part of the business operation. Therefore, solicitation of a business would be prohibited whether that business had permits for all or only for some of its locations, or for all or only part of its business property at any given location.