



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 218

July 8, 1994

Whether Government Code section 572.058 would require a board member of a state agency to recuse himself from a decision involving agency litigation against a bank that is trustee for a pension and profit-sharing plan established by the board member. (AOR-244)

The Texas Ethics Commission has been asked about the applicability of Government Code section 572.058(a) to a particular situation. Section 572.058(a) reads as follows:

An elected or appointed 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. The disclosure shall be entered in the minutes of the meeting.

In short, if a member of the board of a state agency has a "personal or private interest" in a matter before the board, the member must disclose the interest and may not participate in the matter.¹

The requestor asks about a situation in which a state agency is anticipating litigation against a bank in regard to certain bond matters. The same bank happens to be the trustee for a pension and profit-sharing plan for a professional corporation established by the board member. The question is whether the board member has a "personal or private interest in a measure, proposal, or decision" pending before the board for the purposes of section 572.058(a).

We find no cases or opinions that specifically determine whether a particular interest constitutes a "personal or private interest" for purposes of section 572.058.² See generally Attorney General Opinion H-1319 (1978) (whether personal or private interest exists depends on particular contract). In our opinion, however, the term does not include the interest of the board member in question to the bank, which is essentially that of an ordinary customer and consumer of products or services offered by the bank. Nothing in the request letter suggests that the contemplated litigation is of greater significance to the board member than to the bank's many other customers. Therefore, the board member is not required to recuse himself from participating in a decision about agency litigation against the bank in question.

SUMMARY

A member of the board of a state agency is not required to recuse himself from participation in a decision about litigation against a bank on bond matters in a case in which the bank is the trustee for a pension and profit-sharing plan for a professional corporation established by the board member.

¹ We note that Attorney General Opinion JM-671 (1987) held that section 6 of former article 6252-9b, now Government Code section 572.058(a), did not change the common law conflict of interest rule prohibiting contracts between a governmental body and an entity in which a member of the body has an interest. See also *Bexar County v. Wentworth*, 378 S.W.2d 126, 128-29 (Tex. Civ. App. — San

Antonio 1964, writ ref'd n.r.e.); *Meyers v. Walker*, 276 S.W. 305, 307 (Tex. Civ. App. — Eastland 1925, no writ); Attorney General Letter Opinion 93-12 (1993). Under Attorney General Opinion JM-671, disclosure and recusal are not sufficient to allow a board to enter into a contract in which a board member has a pecuniary interest.

² Section 572.058(f) of the Government Code provides that "personal or private interest" has the same meaning as is given to it under article III, section 22, of the Texas Constitution. We find no authorities interpreting the phrase in the constitutional provision. See 1 G. Braden, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 141 (1977)(commenting that the provision is unenforceable as written).