



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 256

March 10, 1995

Application of section 572.058 of the Government Code to a state board member who is a shareholder in a law firm. (AOR-287)

The Texas Ethics Commission has been asked about the application of section 572.058 of the Government Code, which provides in subsection (a) 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 law]. The officer may not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

See also Gov't Code § 572.058(b) (violation subjects board member to removal). The request letter asks about the application of that provision to a situation in which a shareholder in a law firm is appointed to the board of a state agency. The law firm would not represent clients before the agency and would not "undertake any relationship with a client that was based on the outcome of any decision to be made by the [state agency]." In addition, if a former or current client of the law firm came before the state agency, the shareholder would disclose the relationship and recuse himself from participating in the matter. The request letter seeks assurance that the law firm would not be required to resign or refrain from representing those clients in unrelated matters as a result of the shareholder's position as a member of the state board.

Even assuming that the shareholder/board member had a "personal or private" interest in an agency matter involving a law firm client, disclosure of the interest and recusal from participation would be the only steps required of the board member under section 572.058. *See generally* [Ethics Advisory Opinion No. 218](#) (1994) (personal or private interest does not include an interest that is merely the interest of an ordinary customer). Section 572.058 would not require the law firm to resign from representing the client in unrelated matters. *But see* Attorney General Opinion JM-671 (1987) (section 572.058 does not change common law conflict-of-interest rule in regard to *contracts in which a public officer has an interest*).

SUMMARY

In a situation in which a member of the governing board of a state agency has a personal or private interest in a matter pending before the board, section 572.058 of the Government Code requires that the board member disclose the interest and recuse himself from participation in the matter. Section 572.058 does not require the board member to divest himself of the interest.