



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 257

*April 13, 1995*

*Whether a member of the Board of Vocational Nurse Examiners may provide continuing education workshops for licensed vocational nurses seeking license renewal. (AOR-285)*

The Texas Ethics Commission has been asked to consider whether a member of the Board of Vocational Nurse Examiners may provide continuing education workshops for profit for licensed vocational nurses seeking license renewal. In order to renew a license, a vocational nurse must fulfill a continuing education requirement:

- (a) To renew a license, a licensee must demonstrate to the satisfaction of the Board completion of the requirement for continuing professional education.
- (b) The Board shall adopt rules relating to the operation of the mandatory continuing education programs. In establishing the requirement for continuing education, the Board shall consider:
  - (1) factors that lead to the competent performance of professional duties; and
  - (2) the continuing education needs of licensees.
- (c) The Board shall adopt rules relating to the adoption or approval of mandatory continuing education programs and providers and shall adopt rules to evaluate the effectiveness of the programs and a licensee's participation and performance in the programs.

V.T.C.S. art. 4528c, § 8A; *see also* 22 T.A.C. §§ 237.15 - 237.17.

Chapter 572 of the Government Code sets out standards of conduct for state officers. One of those standards states that a state officer should not "accept other employment or compensation that could reasonably be expected to impair the officer's . . . independence of judgment in the performance of the officer's . . . official duties." Gov't Code § 572.051(3). In our view, accepting compensation for providing continuing education courses to licensed vocational nurses could reasonably be expected to impair a board member's independence of judgment in setting standards for continuing education courses and in evaluating the effectiveness of programs.<sup>1</sup> *See Ethics Advisory Opinion No. 192* (1994) (regarding standards of conduct).

The Penal Code provisions concerning the acceptance of benefits by public servants are also relevant in this situation. Penal Code section 36.08(a) prohibits a public servant in an agency performing regulatory functions from soliciting, accepting, or agreeing to accept a benefit from a person he knows to be subject to regulation by the public servant or his agency. There is an exception to the prohibition for fees for services, but the exception is applicable only if the fee is for services rendered *in a capacity other than as a public servant*. *See generally* Gov't Code § 572.058 (requiring recusal of board member if board member has an interest in matter before board).

### SUMMARY

A member of the Board of Vocational Nurse Examiners should not offer continuing education courses for profit for vocational nurses seeking license renewal.

<sup>1</sup> We note that section 5 of article 4528c specifically requires one board member to be a Registered Nurse who is actively involved in an educational program in a teaching, administrative, or supervisory capacity. Section 5 also prohibits certain business and professional activities of board members. This opinion is not intended to address a situation involving the board member holding that position.