



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 263

May 12, 1995

Whether a corporation owned by a legislator's spouse may sell a tract of land to a purchaser who intends to construct improvements on the tract and lease them to the state. (AOR-294)

The Texas Ethics Commission has been asked whether any law subject to its jurisdiction would prohibit a corporation owned by a legislator's spouse from selling a tract of land to a purchaser who intends to construct improvements on the tract and lease them to the state. The requestor describes the situation as follows:

The stock of the corporation granting the option is owned by the spouse of a legislator as community property. Neither the legislator nor the spouse has any interest in the optionee/purchaser nor is in partnership of any type with it. Neither the legislator nor the spouse has any control over the form or amount of the bid to be submitted to the state by the optionee/purchaser or anyone else.

After the corporation grants the option it will be bound to sell at the stated price and at the option of the optionee/purchaser. The option must be exercised within 30 days. If it is exercised, the corporation will sell the land within 30 days and neither the corporation nor the legislator will have or retain any interest in the land, the purchasing entity, or in a future lease of the land and improvements to the state. The optionee/purchaser has no existing lease or agreement to lease with the state.

Two of the statutes the Ethics Commission has authority to interpret address business interests of legislators. Section 572.053 of the Government Code provides that a member of the legislature may not vote on a measure or a bill that will directly benefit a specific business transaction of a business entity in which the member has a controlling interest (other than a measure affecting an entire class of businesses). Even assuming that the legislator in this request has a controlling interest in the corporation, the statute does not appear to apply here because there is no suggestion that a bill or measure affecting the proposed purchase transaction will come before the legislature.¹ If such a measure did come before the legislature, the legislator would not be able to vote on it.

Another provision of chapter 572 prohibits a legislator, or a business entity in which a legislator has a substantial interest,² 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. Under the facts of this request, the business entity in which the legislator has an interest would not own the property at the time lease negotiations or a lease with the state is entered into. This provision would therefore not prevent the corporation owned by the legislator's spouse from selling the property to the prospective buyer.

We note that article III, section 18, of the Texas Constitution also restricts a legislator from entering into a contract with the state. The Texas Ethics Commission has no authority to interpret constitutional provisions.

SUMMARY

None of the provisions subject to interpretation by the Ethics Commission prohibit a corporation owned by a legislator's spouse from selling a tract of land that the purchaser intends to develop for lease to the state, provided that neither the corporation nor the legislator retains any interest in the property.

¹ The statute defines "controlling interest" to include an ownership interest or participating interest by virtue of shares, stock, or otherwise that exceeds 10 percent; membership on the board of directors or other governing body of the business entity; or service as an officer of the business entity. Gov't Code § 572.053(b). We assume for purposes of this opinion that the legislator has a controlling interest in the corporation by virtue of the Texas community property laws.

² Government Code section 572.005 provides that

[a]n individual has a substantial interest in a business entity if the individual:

- (1) has a controlling interest in the business entity;
- (2) owns more than 10 percent of the voting interest in the entity;
- (3) owns more than \$25,000 of the fair market value of the business entity;
- (4) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10 percent of the profits, proceeds, or capital gains of the business entity;
- (5) is a member of the board of directors or other governing board of the business entity;
- (6) serves as an elected officer of the business entity; or
- (7) is an employee of the business entity.