



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 298

January 12, 1996

*Application of Government Code section 572.058 to a member of the board of the Department of Housing and Community Affairs who bids on a project of a developer applying for tax credits under the department's tax credit program. (AOR-332)*

The Texas Ethics Commission has been asked about the application of Government Code section 572.058 to a situation in which a member of the board of the Department of Housing and Community Affairs who owns a construction company bids on a project of a developer applying for tax credits under a tax credit program administered by the department. The requestor wishes to know whether recusal from matters involving the developer would be required, and if so, what the appropriate recusal procedure would be.

Section 572.058(a) of the Government Code provides in pertinent part the following:

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 Chapter 551 [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.

The term "personal or private interest" in section 572.058(a) has the same meaning as in article III, section 22, of the Texas Constitution. Gov't Code § 572.058(f). The scope of this term has not been clearly defined under either the constitutional provision or the Government Code section. See [Ethics Advisory Opinion No. 218](#) n.2 (1994). Whether a member has a personal or private interest in a matter before the board is a fact question. See generally Attorney General Opinion H-1319 (1978) (whether personal or private interest exists depends on particular contract). We believe the board member would have a personal or private interest in the award of tax credits for a project on which the member's company has submitted a bid or has been awarded a contract.<sup>1</sup> If this situation arises, the member should therefore disclose the fact that he has an interest in the matter in a meeting called under the Open Meetings Act, and recuse himself not only from voting, but from any participation in the matter. See [Ethics Advisory Opinions Nos. 256](#) (1995), [218](#) (1994). He would not, however, be required to recuse himself from participation in other matters involving the general administration of the tax credit program.<sup>2</sup>

### SUMMARY

A member of the board of the Texas Department of Housing and Community Affairs who has submitted a bid or has been awarded a contract pertaining to a project of a developer who applies for tax credits for the project under the department's tax credit program must disclose in an open meeting that he has an interest in the award of tax credits to the developer and recuse himself from participation in the matter. The board member would not be required to recuse himself from participation in other matters involving the general administration of the tax credit program.

<sup>1</sup> Government Code section 572.058(f) provides that a person does not have a "personal or private interest" in a measure, proposal, or decision if the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation.

<sup>2</sup> 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.