



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 311

March 22, 1996

Whether a person appointed to the Texas Structural Pest Control Board as an industry member pursuant to V.T.C.S. article 135b-6, section 3(a), may engage in certain activities. (AOR-345)

The Texas Ethics Commission has been asked whether a person appointed to the Texas Structural Pest Control Board as an industry member pursuant to V.T.C.S. article 135b-6, section 3(a), may engage in the following activities:

- (a) teach re-certification classes requiring board approval;
- (b) consult with licensed pest control businesses regarding problems which may result in litigation or complaints before the board;
- (c) teach a technician training course approved by the board under section 4A of the Structural Pest Control Act; and
- (d) teach general technician training courses that assist people in complying with a board rule, but are not specifically approved or reviewed by the agency.

Section 572.051(3) of the Government Code provides 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." In [Ethics Advisory Opinion No. 257](#) (1995) the commission determined that a member of the Board of Vocational Nurse Examiners should not offer continuing education courses for profit for vocational nurses seeking license renewal because accepting compensation for providing continuing education courses to agency licensees 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. In our opinion, the activities at issue in this request raise similar conflicts of interest.

The board member who is the subject of this request is an industry representative on the board and is required to have been "engaged in the business of structural pest control for at least five years immediately preceding the appointment" under the Structural Pest Control Act. *See* V.T.C.S. art. 135b-6, § 3(a). The legislature clearly contemplated that members filling "industry-representative" positions on the board would often be licensees of the board or have financial interests in structural pest control businesses. *See id.* § 3(f), (g). It does not follow, though, that it is appropriate for a board member to receive personal financial benefit from the efforts of others in the business to comply with requirements of the board. Not only could such activities be expected to interfere with the member's judgment on matters involving approval of re-certification courses, certification requirements, and the disposition of particular complaints or disputes before the board, but they also raise the question of whether the member would be compensated impermissibly for providing a service in his capacity as a public servant in violation of chapter 36 of the Penal Code. *See* Penal Code §§ 36.08 (prohibition on acceptance of benefits from persons subject to public servant's jurisdiction); 36.10 (exception to benefits prohibition for fee provided for services rendered in other than official capacity); [Ethics Advisory Opinion No. 257](#). For these reasons, we determine that a member of the Structural Pest Control Board should not teach certification or training courses for licensed pest control applicators, or consult with structural pest control businesses concerning problems that could result in disputes before the board.

SUMMARY

A member of the Structural Pest Control Board should not teach certification or training courses for licensed pest control applicators, or consult with structural pest control businesses concerning problems that could result in disputes before the board.