



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 318

*March 22, 1996*

*Whether a member of the Board of Public Accountancy may provide continuing education courses to board licensees and related questions. (AOR-354)*

The Texas Ethics Commission has been asked a number of questions about the permissibility of certain activities by members of the Board of Public Accountancy. The first question is whether a board member may provide courses that satisfy continuing education requirements for board licensees. In our opinion, a board member should not do so.

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 compensation 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. The issue here is whether a board member may offer continuing education courses to board licensees if the board member does not charge for doing so.

In our opinion, a conflict of interest arises whenever a member of a licensing board offers courses in a private capacity for board licensees. The arrangement intertwines the private interest of the board member in promoting his professional expertise with the interests of the board in continuing education for its licensees. The proposed arrangement could reasonably be expected to impair the board member's independence of judgment in the performance of board duties in connection with continuing education requirements.

The request letter also raises a question about participation by board members in a review program required by the board. Each firm registered with the board that performs audits, reviews, compilations, forecasts, projections, or other special reports must have its work reviewed at least once every three years. The board has hired three consultants who have oversight over an organization that determines who is eligible to conduct these reviews. The question here is whether a board member may conduct such reviews.<sup>1</sup> Again, it is our opinion that such activity would create an impermissible conflict of interest between a board member's private activities and his responsibilities as a member of the board responsible for the review program.

The final question is whether a board member may testify as an expert witness in litigation on a matter not involving board business. There is no general prohibition on such activity, but a board member should be aware of the limits on acceptance of payments in the honorarium provision in section 36.07 of the Penal Code and the restrictions on benefits in section 36.08 of the Penal Code. *See generally* [Ethics Advisory Opinion No. 192](#) (1994).

### SUMMARY

A member of the Board of Public Accountancy should not provide courses in a private capacity that satisfy continuing education requirements for board licensees. Nor should a board member conduct reviews that are

required by the board.

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<sup>1</sup> The firm being reviewed pays for the review.