



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 333

July 12, 1996

Questions regarding the application of Government Code section 572.024, which requires the disclosure of fees received by a state officer for services rendered to or on behalf of a person or entity the officer actually knows directly compensates or reimburses a person required to be registered as a lobbyist. (AOR-371)

The Texas Ethics Commission has been asked several questions about the application of section 572.024 of the Government Code, which requires disclosure of certain fees received by a state officer. Specifically, section 572.024 requires the following:

A state officer who receives a fee for services rendered *by the officer* to or on behalf of a person required to be registered under Chapter 305 [the lobby law], *or to or on behalf of a person or entity that the officer actually knows directly compensates or reimburses a person required to be registered* [as a lobbyist] *under Chapter 305*, shall report on the financial statement the name of each person or entity for which the services were rendered and the category of the amount of each fee. [Emphasis added.]

The requestor asks about the application of this provision to three situations. Each situation raises the same two legal issues in somewhat different contexts.

The first issue raised is the circumstances under which a state officer "actually knows" a person compensates or reimburses a person required to be registered as a lobbyist. The request letter states that in the three situations described, the state officer "believes" the person paying the fee in question is required to be registered as a lobbyist. The statute does not define the phrase "actually knows." The term "actual knowledge" in a legal context generally "embraces those things of which the one sought to be charged has express information and those things which a reasonably diligent inquiry and exercise of the means of information at hand would have disclosed." Black's Law Dictionary 604 (6th ed. 1991); *see also City of San Benito v. Cantu*, 831 S.W.2d 416, 421 (Tex. App.--Corpus Christi 1992, no writ). We conclude, therefore, that although the statute does not require a state officer to undertake a painstaking investigation to discover whether a client compensates a person "required to be registered" as a lobbyist, the state officer "actually knows" the client does so if he or she has express information to that effect or can acquire that express information through readily available means. A "belief" that a person compensates or reimburses a person required to be registered as a lobbyist would constitute actual knowledge if the officer has express information that the client compensates such a person or if the officer can readily determine that fact (for example, by calling the Texas Ethics Commission).¹

The next issue is whether a state officer would be receiving "a fee for services rendered by the officer to or on behalf of a person" in the three situations described in the request letter. In the first situation, a state officer participates in a business providing services to local governments. The officer is a majority owner of the business, serves as an officer and employee of the business, draws a salary, and receives a proportionate share of the business's profits. The other participant in the business is similarly compensated. Business contracts with the local government clients do not specify which participant is to provide the services. The business receives a fee for services provided by either one or both of the business participants, and the compensation of the state officer is not tied to any particular contract. In the second situation, the state officer and another participant are equal

owners of a business entity providing consulting services. Both participants draw salaries from the business entity and participate in the business entity's profits. Contracts between the business entity and its clients call for the client to pay the business entity consulting fees and a monthly retainer. The contracts do not require the personal services of a particular participant; services may be provided by either or both. The participant who enlists the client, however, receives a greater proportion of the retainer and fees paid by the client. In the third situation, the state officer is "of counsel" to a law firm. The state officer does not share in firm profits and is paid a salary that is not directly related to retainers or fees paid to the firm by firm clients.

In short, in all three situations the fee in question is paid to a business entity, not to the state officer directly. In each situation, however, the state officer may ultimately receive compensation attributable to such fees. The specific question here is whether the fees in question are received by the state officer. In our opinion, the fees in question are received by a business entity, not by the state officer. Unless the business entity is merely the alter ego of the state officer, a fee received by a business entity does not become a fee received by an officer or employee of the business entity even though some portion of the fee ultimately accrues to the benefit of the state officer.²

SUMMARY

For purposes of Government Code section 572.024, a state officer "actually knows" that a client directly compensates or reimburses a person required to be registered as a lobbyist if the state officer has express information to that effect or can acquire that express information through readily available means. A fee received by a business entity from a client who directly compensates or reimburses a person required to be registered as a lobbyist is not a fee received by a state officer for purposes of section 572.024 unless the business entity is the alter ego of the state officer.

¹ The Texas Ethics Commission could not, of course, provide the name of a person who is required to be registered as a lobbyist but has not fulfilled that requirement. In that case, a state officer would have "actual knowledge" that a client compensated or reimbursed such a person only if the state officer had either express information to that effect or some other means of readily determining that the person was required to be registered.

² Had the legislature sought disclosure of fees received by a business entity for services performed by a state officer, we assume the legislature would have defined the relationship between the business entity and the state officer giving rise to the disclosure requirement. See, e.g., Local Gov't Code § 171.002 (defining "substantial interest in a business entity" for purposes of local government conflict of interest provision).