



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 352

November 22, 1996

Whether legal counsel to parties in a lawsuit that have been ordered by the court "to explore the possibility of resolving the matter through legislative action" may comply with the judge's order without violating section 305.022 of the Government Code.(AOR-389)

The Texas Ethics Commission has been asked about the application of the contingent fee prohibition in Government Code section 305.022 to a situation in which a judge has ordered the parties to a lawsuit "to explore the possibility of resolving the matter through legislative action." The attorneys representing the plaintiffs are working on a contingent fee basis.

Government Code section 305.022(b), which prohibits certain contingent fees for efforts to influence legislation, provides as follows:

(b) A person may not accept any employment or render any service to influence legislation or administrative action for compensation contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.

See generally Gov't Code § 305.002(6) (defining "legislation"). The question raised here is whether the plaintiffs' attorneys would violate that prohibition by acting in accordance with the judge's order by encouraging members of the legislative branch to adopt legislation that achieves an end similar to the relief the plaintiffs seek in the pending lawsuit.¹

As we understand the facts, the plaintiffs hired the attorneys to seek judicial relief, not legislative relief. The defendant in the lawsuit suggested to the judge that the parties seek a legislative resolution. When the attorneys first agreed to take the plaintiffs' case, therefore, they were not *accepting* employment for compensation contingent on the passage or defeat of legislation. The remaining question is whether, by complying with the judge's instructions to seek a legislative resolution, the attorneys would be *rendering services* for compensation contingent on the passage or defeat of legislation.

The request letter explains that if a legislative settlement satisfactory to the parties appears likely, the court will probably enter an agreed judgment. Presumably this means that if the plaintiffs' attorneys are successful in efforts to influence the passage of legislation, the court will order the defendants to make payments to the plaintiffs and the plaintiffs will remit a portion of the payments to their attorneys. Therefore, successful efforts by the plaintiffs' attorneys to influence the passage of legislation may lead to a payment to the plaintiffs' attorneys. Failure to influence the passage of legislation, however, does not mean that the plaintiffs' attorneys will not be paid. Rather, the parties will proceed with the lawsuit. Whether the plaintiffs' attorneys receive a fee will depend on the outcome of the lawsuit. We conclude, therefore, that the compensation the plaintiffs' attorneys have agreed to in this case is not contingent on the passage of legislation. Therefore, the plaintiffs' attorneys would not violate section 305.022(b) by acting in accordance with the judge's order in this situation.

SUMMARY

The compensation the plaintiffs' attorneys have agreed to in the case described in this opinion is not contingent on the passage of legislation.

¹ The plaintiffs in the lawsuit are political subdivisions that seek increased payments from a state agency under 1995 legislation.