



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 358

*February 14, 1997*

*Whether an employee of the Texas Legislature may be the owner of a business that provides election support services to candidates for elective office. (AOR-393)*

The Texas Ethics Commission has been asked whether the laws interpreted by the commission allow a legislative employee to be the owner of a business that provides election support services to candidates for elective office.<sup>1</sup> The services provided to candidates would include compiling election demographic characteristics, voter registration data, and registered voter data by area. The requestor states that the legislative employee would not be involved in the day-to-day operation of the business and would not conduct the business during his legislative working hours.

Chapter 572 of the Government Code sets out standards of conduct for state officers and employees. Gov't Code § 572.051 (standards of conduct). Included in these standards are the admonitions that a state officer or employee should not engage in a business or professional activity that the employee might reasonably expect would require or induce the employee to disclose confidential information gained from his or her official position, or could reasonably be expected to impair the employee's independence of judgment in performing official duties, or could create a substantial conflict between the employee's private interest and the public interest. *Id.* § 572.051(2), (3), (4). Whether outside employment by a legislative employee is appropriate under those standards depends on the nature of the particular outside employment. Every legislative employee should be mindful of those standards and should, of course, refrain from any outside business activity that would violate them. Each legislative employee should also consider the conflict of interest policy set out by Chapter 572, which states:

It is the policy of this state that a state officer or state employee may not have a direct or indirect interest, including financial and other interests, or engage in a business transaction or professional activity, or incur any obligation of any nature that is in substantial conflict with the proper discharge of the officer's or employee's duties in the public interest.

*Id.* § 572.001.

In addition to the provisions in chapter 572 of the Government Code, certain Penal Code provisions are relevant to this opinion request.<sup>2</sup> Section 36.08(f) of the Penal Code prohibits a legislative employee from accepting a "benefit" from any person. Although a fee or salary is a "benefit," [Ethics Advisory Opinion No. 192](#), at 2 n.3, there is an exception to the prohibition for a benefit for which the public servant "gives legitimate consideration in a capacity other than as a public servant." Penal Code § 36.10(a)(1). The requirement that a public servant receive "legitimate consideration" means that the consideration must be commensurate with the value of the services. [Ethics Advisory Opinion No. 41](#), at 1 n.1 (1992). The requirement that a public servant act "in a capacity other than as a public servant" means that it must be the services rendered and not the status of the public servant rendering the services that is of value to the person paying for the services.<sup>3</sup>

In summary, whether a legislative employee may engage in private business activities depends on the facts of a particular situation. Although there is no absolute prohibition on outside employment by legislative employees in

the laws interpreted by the Ethics Commission, any legislative employee considering outside employment should review the provisions mentioned in this opinion to make sure that the outside employment is permissible.

## SUMMARY

Whether a legislative employee may engage in outside business activity depends on the specific nature of the outside business activity. Although there is no absolute prohibition on outside employment by legislative employees in the laws interpreted by the Ethics Commission, any legislative employee considering outside employment should review the provisions mentioned in this opinion to make sure that the outside employment is permissible.

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<sup>1</sup> The legislative employee should ascertain whether any rules or policies of the legislature would restrict his ownership of the business. See [Ethics Advisory Opinion No. 192](#) (1994).

<sup>2</sup> Because the requestor states that the legislative employee would not conduct the business on state time and would use only public information, we need not discuss the application of Penal Code sections 39.02(a)(2) (misuse of government resources) or 39.06 (misuse of official information).

<sup>3</sup> In addition, section 36.07 forbids a public servant to solicit, accept, or agree to accept "an honorarium in consideration for services that the public servant would not have been requested to provide but for the public servant's official position or duties." Penal Code § 36.07(a).