



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 371

July 11, 1997

Questions regarding the application of Chapter 572 of the Government Code to a legislator's representation of clients in the legislator's private legal practice. (AOR-407)

The Texas Ethics Commission has been asked about the application of various ethics laws to a legislator's private legal practice. The first matter raised is whether the legislator may represent a client in a claim brought against a real estate agent in a Texas court under the Texas Real Estate License Act. If the legislator's client recovers a court judgment against the real estate agent, the client could seek to have the judgment paid out of a real estate recovery fund created by statute. V.T.C.S. art. 6573a, § 8. The process for determining whether a judgment is to be paid out of the fund allows the Real Estate Commission to relitigate issues in the underlying claim. *Id.* § 8(h). The second matter is whether the legislator may represent a former teacher who wishes to appeal a school district's decision to the Texas Education Agency.

As a general rule, a legislator may accept a fee for work performed in a capacity other than as a legislator. *See* Penal Code § 36.10(a)(1); [Ethics Advisory Opinion Nos. 358](#) (1997) at 2; [178](#) (1993) (exception to prohibition on acceptance of benefits for fee for which public servant gives legitimate consideration in non-official capacity). Although the representations described in this request do not raise any obvious conflicts of interest, a legislator must also determine for himself whether a particular outside employment is in conflict with the standards of conduct set out in Government Code section 572.051. Government Code section 572.051(3) provides that a state officer or employee should not "accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties." *See* [Ethics Advisory Opinion No. 156](#) (1993) (compliance with standards of conduct set out in statutory predecessor to Gov't Code § 572.051 is matter of personal ethics).

A legislator may not, however, represent a person for compensation before a state agency in the executive branch unless the representation (1) is made in a proceeding that is adversary in nature or in another public hearing that is a matter of record or (2) involves only ministerial acts on the part of the agency. Gov't Code § 572.052(a). The 75th Legislature amended section 572.052(a) to require a legislator who represents a person for compensation before an executive branch agency to disclose to the agency that the member is being compensated for the representation.¹ Act of June 1, 1997, H.B. 3207, § 15, 75th Leg., R.S. (to be codified as an amendment to Gov't Code § 572.052(a)).

In the case involving the claim against a real estate agent, the request letter states that the legislator's representation of the client will not involve any appearances before a state agency. If representation of the client should, however, lead to contact with the Real Estate Commission, the legislator should be sure to confine his activities to the type of representation permissible under Government Code section 572.052(a), and to inform the agency that he is being compensated if the representation takes place on or after September 1, 1997.

The appeal of a school district's decision to the Texas Education Agency is an adversary proceeding before an executive state agency. As indicated above, a legislator may represent a person for compensation before a state agency in the executive branch if the representation is made in compliance with Government Code section

572.052(a). As long as the legislator's contacts with the Texas Education Agency are made within the adversary proceeding, the representation is permissible under Government Code section 572.052(a)(1).²

The requestor next asks whether Government Code section 572.025 would require the legislator to report compensation received from legal representation in the cases described in the request on his annual personal financial statement filed under chapter 572 of the Government Code. If the legislator represents a client for compensation before a state executive agency, the legislator must report on his personal financial statement the name of the agency, the name of the client, and the category of the amount of compensation. Gov't Code § 572.025.

SUMMARY

A legislator may not represent a person for compensation before a state agency in the executive branch unless the representation (1) is made in a proceeding that is adversary in nature or in another public hearing that is a matter of record or (2) involves only ministerial acts on the part of the agency. Beginning on September 1, 1997, a legislator representing a person for compensation before a state agency will be required to disclose to the agency the fact that the legislator is receiving compensation for the representation.

A legislator who represents a person for compensation before an executive state agency must report the name of the agency, the name of the person represented, and the category of the amount of compensation on his or her personal financial statement.

¹ The amendment takes effect on September 1, 1997.

² Again, if the representation takes place on or after September 1, 1997, the legislator must inform the Texas Education Agency that the representation is in exchange for compensation.