



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 374

September 12, 1997

Whether a member of the Legislature may contract with local public housing authorities. (AOR-411)

The Texas Ethics Commission has been asked whether the laws interpreted by the commission permit a legislator to contract with local public housing authorities in Texas. The legislator contracted with various public housing authorities in Texas before being elected to the legislature.

The standards of conduct set out in Government Code section 572.051 provide that a state officer should not engage in outside business activity that could reasonably be expected to impair the officeholder's independence of judgment. Before entering into a contract with a public housing authority or similar agency, a member of the legislature should consider whether there is any conflict, or any appearance of conflict, between the legislator's responsibilities as a public servant and his or her private contractual obligations. A legislator should not engage in a business activity that creates such a conflict or the appearance of such a conflict. *See Ethics Advisory Opinion No. 228* (1994) at 2 n.2 (compliance with standards of conduct is a matter of personal ethics).

In addition to the standards of conduct, certain sections of the Penal Code that are subject to interpretation by the Ethics Commission¹ are relevant to this request. The Penal Code generally prohibits the acceptance of a benefit by a legislator. Penal Code § 36.08(f). There is an exception, however, for a fee for which the legislator "gives legitimate consideration in a capacity other than as a public servant." *Id.* § 36.10(a)(1); *see Ethics Advisory Opinion No. 371* (1997).² The Penal Code also prohibits a legislator from accepting an honorarium in consideration for providing services the legislator would not have been asked to provide but for his or her official position. Penal Code § 36.07. *See generally Ethics Advisory Opinion Nos. 273* (1995) (accepting fee for speaking engagement); *117* (1993) (representing clients before school district); *41* (1992) (providing legal services to special-purpose district).

A legislator should also be aware of various restrictions in Government Code chapter 572 that might be relevant to a particular contract.³ For example, a legislator may not vote on a measure or bill that will directly benefit a specific business transaction of a business entity in which the legislator has a controlling interest unless the bill or measure will affect an entire class of business entities. Gov't Code § 572.053. Also, a legislator who represents another person before an executive branch state agency for compensation must comply with the restrictions in Government Code section 572.052(a), Act of June 1, 1997, H.B. 3207, § 15, 75th Leg., R.S. (amending Gov't Code § 572.052(a)).

SUMMARY

A legislator should not engage in business activities that create a conflict or the appearance of a conflict between the legislator's responsibilities as a public servant and the legislator's private contractual obligations.

Although the laws interpreted by the Texas Ethics Commission do not contain a general prohibition against legislators contracting to provide services for public housing authorities, certain provisions in the Penal Code and in Chapter 572 of the Government Code might prohibit such a contract in some circumstances.

¹ The Ethics Commission has authority to issue advisory opinions about the following statutes: chapters 302, 303, 305, 572, and 2004 of the Government Code; subchapter C, chapter 159, of the Local Government Code (as provided by Gov't Code § 571.061(a)(2)); title 15 of the Election Code; and chapters 36 and 39 of the Penal Code.

² The phrase "legitimate consideration" means that the fee must reflect the actual value of the services. [Ethics Advisory Opinion No. 41 \(1992\)](#) at 1 n.1.

³ Article III, section 18, of the Texas Constitution prohibits a member of the legislature from having an interest in a contract with the state or a county if the contract was authorized by any law passed during the term for which the legislator was elected. Questions about the scope of this provision, as well as the effect of any other conflict of interest laws outside the jurisdiction of the Texas Ethics Commission, should be addressed to the Office of the Attorney General. See Attorney General Opinion H-696 (1975) (contracts with cities and school districts are not prohibited by Tex. Const. art. III, § 18).