



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 381

*November 14, 1997*

*The meaning of the term "executive head" for purposes of the financial disclosure requirements and other provisions of Government Code chapter 572. (AOR-421)*

The Texas Ethics Commission has been asked about the meaning of the term "executive head" for purposes of the financial disclosure requirements and other provisions of Government Code chapter 572.

Government Code chapter 572 requires that the "executive head of a state agency" file a personal financial disclosure statement 45 days after assuming the duties of the position and by April 30 of each subsequent calendar year. Gov't Code § 572.026(a), (c); *see also id.* § 572.002(12) (defining "state officer" to include the executive head of a state agency). The revolving door law in Government Code section 572.054(a) also applies specifically to the "executive head of a regulatory agency." *See id.* § 572.002(8) (defining "regulatory agency" as a subset of "state agency"); *see also id.* § 572.002(10) (defining "state agency"). For purposes of those provisions, the "executive head of a state agency" is defined as

the director, executive director, commissioner, administrator, chief clerk, or other individual who is appointed by the governing body or highest officer of the state agency to act as the chief executive or administrative officer of the agency and who is not an appointed officer.

*Id.* § 572.002(5).

The request letter asks whether either of the managers described below is the executive head of the state agency in question for purposes of chapter 572 of the Government Code:

An independent regulatory agency's daily operations are overseen by a salaried, solitary gubernatorial appointee ("appointed officer"), who serves for a specific term pursuant to statute, and who offices and works at the agency's main office on a full time basis. Hired by the appointed officer, assisting in the management of the agency's operations, and reporting directly to the appointed officer are: "manager no. 1," serving as deputy or assistant to the appointed officer, and "manager no. 2." Manager no. 2 is in charge of administration and general counsel functions, and oversees accounting, purchasing, information resources, human resources, and legal services personnel for the agency. Budget personnel report directly to the appointed officer, who is the chief fiscal officer of the agency. Manager no. 1 manages several division directors whose divisions perform the "mission" work of the agency, which involves the exercise of independent judgment by licensed professionals in those divisions.

The individual described above as the "appointed officer" is "an appointed officer" as that term is defined for purposes of chapter 572. *Id.* § 572.002(1)(C) (defining "appointed officer" to include an officer of a state agency who is appointed for a term of office specified by statute). Therefore, that individual is not the "executive head" of the agency because the definition of "executive head" excludes "an appointed officer." The question raised, then is whether one of the managers described above is the "executive head."

An "executive head" must act as the chief executive or administrative officer of the agency. In our view that means that the executive head is in charge of the day-to-day operations of the agency. Neither of the managers described above is the "executive head" of the agency because neither of those individuals is in charge of the day-to-day operation of the agency. Both assist and report to the appointed officer in regard to the day-to-day operation of the agency.

The result of our conclusion is that the agency in question does not have an "executive head" for purposes of chapter 572. In our opinion, chapter 572 does not anticipate that every state agency will have an "executive head" as the term is defined in section 572.002(5). The provisions that apply specifically to the "executive head" of a state agency ensure that the individual in charge of the day-to-day operations of a state agency is subject to certain rules that generally apply to state officers but not state employees. In the case of the agency in question, the individual in charge of the day-to-day operations of the agency is a "state officer" and therefore subject to those provisions. The exclusion of "state officers" from the definition of "executive head" does not, in our view, imply that there is necessarily an employee who is the "executive head" of the agency. Rather, it is likely that "state officers" were expressly excluded from the definition of "executive head" to make clear that an individual who is a state officer and also functions as the chief executive of a state agency is subject to the initial 30-day filing deadline applicable to state officers rather than to the more generous 45-day filing deadline applicable to "the executive head of a state agency." *See id.* § 572.026.

### SUMMARY

The chief executive or administrative officer of a state agency is the individual in charge of the day-to-day operations of the agency.

If the individual in charge of the day-to-day operations of an agency is an appointed officer and is therefore excluded from the statutory definition of "executive head of a state agency" in Government Code section 572.002(5), there is no "executive head" of that agency for purposes of Government Code chapter 572.