



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 388

January 16, 1998

Whether members of the Statewide Health Coordinating Council are required to file personal financial disclosure statements under Chapter 572, Government Code. (AOR-427)

The Texas Ethics Commission has been asked whether members of the Statewide Health Coordinating Council are required to file personal financial disclosure statements. Chapter 572, Government Code, requires each state officer to file a personal financial statement. The definition of "state officer" includes "an officer of a state agency who is appointed for a term of office specified by the Texas Constitution or a statute of this state." Gov't Code § 572.002(1), (12) (subsection (12) defines "state officer" as including an appointed officer and subsection (1) defines "appointed officer"). Twelve members of the council are appointed by the governor for six-year terms. These members are therefore "state officers" if the council is a "state agency," as defined in chapter 572.

A "state agency" includes the following:

a department, commission, board, office, or other agency that:

- (i) is in the executive branch of state government;
- (ii) has authority that is not limited to a geographical portion of the state; and
- (iii) was created by the Texas Constitution or a statute of this state.

Id. § 572.002(10)(A). The council is in the executive branch of state government and was created by Texas statute.¹ It also has authority that is not limited to a geographical portion of the state.² It is therefore a state agency, and the twelve appointed members are state officers required to file the personal financial statement.

Five places on the council are filled by ex-officio members or their designees.³ These individuals are within the definition of "state officer" in Government Code section 572.002(1)(D), (12),⁴ as members of the governing board of a state agency who are not otherwise appointed officers, elected officers, or executive heads of a state agency.⁵

SUMMARY

Members of the Statewide Health Coordinating Council are required to file personal financial disclosure statements.

¹ Section 10 of Acts 1997, 75th Leg., ch. 1386, abolished the statewide health coordinating council that existed immediately before the effective date of the Act (September 1, 1997). Section 1 of Acts 1997, 75th Leg., ch. 1386, established the new statewide health coordinating council effective September 1, 1997.

² A governmental entity is not a "state agency " for purposes of Government Code chapter 572 if it has only advisory authority. *See Ethics Advisory Opinion Nos. 243* (1995), *121* (1993), *26* (1992). The council 's authority (which includes the power to set and collect fees for use of its clearinghouse, contract with public and private entities, and solicit, receive and spend grants) is more than advisory. *See Health & Safety Code § 105.007(b)*.

³ The non-appointed members include the following: the commissioner of health and human services or a representative designated by the commissioner; the presiding officer of the Texas Higher Education Coordinating Board or a representative designated by the presiding officer; the presiding officer of the Department of Health or a representative designated by the presiding officer of the department; the presiding officer of the Texas Health Care Information Council or the representative of the presiding officer; and the presiding officer of the Texas Department of Mental Health and Mental Retardation or the representative of the presiding officer. Health & Safety Code § 104.011(a).

⁴ Section 572.002(1)(D) includes within the definition of an "appointed officer " "an individual who is a member of the governing board or commission of a state agency, who is not appointed, and who is not otherwise: (i) an elected officer; (ii) an officer described by Paragraphs (A) through (C); or (iii) an executive head of a state agency."

⁵ Some of the ex-officio members are required to file the personal financial statement in any case because of their service for another state agency. A state officer is required to file only one personal financial statement for each year, despite service as a state officer in more than one capacity. Gov 't Code § 572.028. A person designated to serve as the representative of an ex-officio member of the governing board of a state agency must file a personal financial statement if the designee exercises independent authority. *Ethics Advisory Opinion No. 27* (1992).