



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 408

*October 9, 1998*

*Regarding private employment by members of the legislature. (AOR-449 & AOR-450)*

The Texas Ethics Commission has been asked to consider two questions about private employment by members of the legislature. The first question is whether a legislator may be employed by a law firm that includes registered lobbyists among its partners, owners, or associates or with a law firm that owns a lobby firm. The second question is whether a legislator may be employed as a consultant by an accounting and investment firm that provides services to a business that provides medicaid services.

The ethics laws subject to interpretation by the Ethics Commission include a number of provisions that are relevant to outside business activity by members of the legislature.

The standards of conduct set out in Government Code section 572.051(3) 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. *See Ethics Advisory Opinion No. 228* (1994) at 2 n.2 (compliance with § 572.051 standards of conduct is matter of personal ethics). Thus, before entering into a private employment relationship, a member of the legislature should consider whether there is any conflict between the legislator's responsibilities as a public servant and his or her private employment.

Penal Code chapter 36 restricts the acceptance of benefits by legislators but permits a legislator to accept a fee for work performed in a capacity other than a legislator if the fee reflects the actual value of the work performed. Penal Code § 36.10(a)(1); *Ethics Advisory Opinion No. 41* (1992) at 1 n.1; *see also* Penal Code §§ 36.02 (prohibiting bribery), 36.07 (prohibiting acceptance of certain honoraria).

A legislator should also be aware of various restrictions in Government Code chapter 572 that might be relevant to a particular contract.<sup>1</sup> 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(a). 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).

A member of the legislature should consider any proposed private employment in light of the laws discussed above. In regard to the specific work in question here, a legislator is not subject to a general prohibition on employment by a law firm or by an accounting and investment firm as long as the legislator is performing the work in a capacity other than as a legislator and as long as the legislator's compensation reflects the actual value of the work performed.<sup>2</sup> Specific circumstances could arise, however, in which such employment might not be in keeping with the standards of conduct in Government Code section 572.051.

### SUMMARY

A legislator is not subject to a general prohibition on employment by a law firm or by an accounting and investment firm as long as the legislator is performing the work in a capacity other than as a legislator and as long as the legislator's compensation reflects the actual value of the work performed. Specific circumstances

could arise, however, in which such employment might not be in keeping with the standards of conduct in Government Code section 572.051.

---

<sup>1</sup> 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. Article III, section 22, of the Texas Constitution requires a legislator who has a personal or private interest in a measure or bill proposed or pending before the legislature to disclose that fact and refrain from voting on the matter. Questions about the scope of these provisions, 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.

<sup>2</sup> The question about whether a legislator could work for a law firm that employs lobbyists or is otherwise affiliated with a lobbyist may have arisen because of a 1993 opinion in which we concluded that a member of the legislature could not accept a fee for lobbying the legislature. The basis for our conclusion was that a legislator could not act in a capacity other than as a legislator in dealing with other legislators. [Ethics Advisory Opinion No. 123](#) (1993); *see also* [Ethics Advisory Opinion No. 155](#) (1993). That analysis is not relevant to a situation in which a legislator works for an entity that also employs a lobbyist as long as the legislator's work for the entity does not include efforts to influence other legislators.