



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 410

February 12, 1999

Whether a member of the Texas Real Estate Commission may teach courses for prospective and current commission licensees. (AOR-453)

The Texas Ethics Commission has been asked to consider whether a member of the Texas Real Estate Commission ("TREC") may teach courses for current or prospective licensees of the Real Estate Commission. The specific questions are as follows:

- (1) May a member of the commission serve with or without compensation as an instructor in a course offered by a provider regulated by the commission?;
- (2) May a member of the commission serve with or without compensation as an instructor in a course offered by a provider who is not regulated by the commission but whose courses are approved as meeting statutory course content requirements?;
- (3) Would the answer to either question vary if the members of the commission adopted a policy under which a member who had served as an instructor would recuse himself or herself from participation in any deliberation before the membership involving the provider of the particular course?; and
- (4) Would the answer to either question vary if the member received reimbursement for travel and lodging expenses from the provider for serving as an instructor?

The four questions raised in the request letter all have to do with whether a member of the TREC may teach courses for prospective and current licensees of the TREC. The legislature has set out standards of conduct applicable to state officers. Gov't Code § 572.051. One of those standards provides that a state officer should not accept other employment or compensation that could reasonably be expected to impair the officer's independence of judgment in the performance of the officer's official duties. *Id.* § 572.051(3). In a 1996 opinion, we relied on that standard of conduct as the basis for our conclusion that an impermissible conflict of interest arises whenever a member of a licensing board offers courses in a private capacity for board licensees because "[t]he arrangement intertwines the private interest of the board member in promoting his professional expertise with the interest of the board in continuing education for its licensees." [Ethics Advisory Opinion No. 318](#) (1996); see also [Ethics Advisory Opinion Nos. 311](#) (1996); [257](#) (1995).

The opinions cited above addressed continuing education courses. The request before us asks about courses provided to prospective licensees as well as continuing education courses. In our view, the same potential for conflict of interest arises when a state board member teaches courses intended for prospective licensees as when the board member teaches continuing education courses for current licensees.¹

The request letter also asks whether receipt of compensation or reimbursement for expenses for teaching is relevant to the questions raised. A board member should not teach courses regulated by the TREC even if the board member receives no compensation or reimbursement for doing so. [Ethics Advisory Opinion No. 318](#) (1996).

The remaining issue is whether a member of the TREC may teach a course regulated by the TREC if he recuses himself from participation in any deliberation involving the course or the provider. In the Government Code chapter that contains the standards of conduct cited previously, there is also a provision that requires a state board member to recuse himself if he has a personal or private interest in a matter before the board. Gov't Code § 572.058. We assume the legislature intended state officers to comply with both provisions. In other words, state officers should comply with the standards of conduct set out in section 572.051 by not engaging in conduct proscribed by those standards of conduct. When conflicts of interest nonetheless arise, state officers must recuse themselves in accordance with section 572.058. We conclude therefore that recusal would not cure a violation of the standards of conduct set out in section 572.051.

SUMMARY

A member of the Texas Real Estate Commission ("TREC") should not teach courses that satisfy TREC requirements for prospective or current licensees.

¹ The TREC regulates courses for licensees in different ways. In some instances the TREC approves or accredits the course provider; in other instances the TREC approves specific courses, but does not regulate the provider in any other way. *See generally* V.T.C.S. art. 6573a, §§ 7, 7A. For purposes of the issue raised, we see no meaningful distinction between teaching an approved course and teaching a course for an approved provider.