



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 412

March 12, 1999

Regarding the application of Government Code section 572.058 to a situation in which a member of the Texas Higher Education Coordinating Board would serve as a nonvoting member of the advisory board of a local nonprofit hospital. The nonprofit hospital has agreed to donate land to a state university and intends to enter into an agreement with the university pursuant to which the hospital would serve as a medical education facility. The Coordinating Board "will be asked to approve the donation of land from the nonprofit hospital ... and may be called upon to consider and approve program offerings and/or physical facilities for the medical education facility." (AOR-455)

The Texas Ethics Commission has been asked about the application of section 572.058 of the Government Code to a situation in which a member of the Texas Higher Education Coordinating Board also serves as a nonvoting member of the advisory board of a nonprofit hospital. The nonprofit hospital has agreed to donate land to a state university and intends to enter into an agreement with the university pursuant to which the hospital would serve as a medical education facility. The Coordinating Board must approve the land donation and "may be called upon to consider and approve program offerings and/or physical facilities for the medical education facility."

If a member of a state board has a "personal or private interest" in a measure, proposal, or decision pending before the state board, the board member must disclose that fact in a public meeting and may not vote or otherwise participate in the measure, proposal, or decision. Gov't Code § 572.058(a).¹ The question raised here is whether service as a nonvoting member of the advisory board of a nonprofit hospital would constitute a "personal or private interest" in Coordinating Board decisions regarding the land donation and the medical education facility.

Section 572.058(f) of the Government Code provides that "personal or private interest" has the same meaning as is given to it under Article III, Section 22, of the Texas Constitution.² We find no cases or opinions, however, that interpret the phrase for purposes of that constitutional provision. *See generally* 1 G. Braden, *The Constitution of the State of Texas: An Annotated and Comparative Analysis* 141 (1977). In our view, however, a state board member has a "personal or private interest" in a decision concerning an agreement between the state board and another entity to which the board member owes his or her loyalty.³ Surely one of the purposes of section 572.058 is to prescribe the proper course of action for a board member who has potentially conflicting loyalties in regard to a board decision. We conclude, therefore, that a member of the Coordinating Board who is also a nonvoting member of the advisory board of a nonprofit entity should disclose his position with the nonprofit entity and recuse himself from any Coordinating Board decision regarding acceptance of a donation of land from the nonprofit entity or regarding approval of an agreement between the nonprofit entity and a state university.

SUMMARY

A member of the Texas Higher Education Coordinating Board who is also a nonvoting member of the advisory board of a nonprofit entity should disclose his position with the nonprofit entity and recuse himself from any Coordinating Board decision regarding acceptance of a donation of land from the nonprofit entity or regarding approval of an agreement between the nonprofit entity and a state university.

¹ Section 572.058(a) requires disclosure and recusal by the board member but does not prohibit a state board from engaging in a transaction in which a board member has a personal or private interest. We note, however, that the Attorney General has held that the adoption of the disclosure and recusal requirements in section 572.058 did not change the common-law conflict-of-interest rule prohibiting a board from entering into a contract in which a board member has a *pecuniary* interest. Attorney General Opinion JM-671 (1987).

² Section 572.058(f) also provides that an individual does not have a “personal or private interest” in a measure, proposal, or decision if the individual is engaged in a profession, trade, or occupation and the individual's interest is the same as all others similarly engaged in the profession, trade, or occupation. That provision is not relevant to the question raised here.

³ The request letter does not explain the specific obligations of a “nonvoting member of the advisory board” to the nonprofit entity. We assume, however, that at the very least this means that the board member's advice is to be offered with the interests of the nonprofit entity in mind.