



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 463

July 15, 2005

Application of the contingent fee prohibition in section 305.022 of the Government Code. (AOR-521)

The Ethics Commission has been asked about the application of the provision in the lobby law that prohibits agreements for compensation contingent on the outcome of a matter before a state agency. The specific question is about the application of the prohibition to an individual partner in a partnership who communicates with officers or employees of a state agency to obtain a permit for the partnership.

The prohibition in question provides as follows:

A person may not accept any employment or render any service to influence legislation or administrative action for compensation contingent on the passage or defeat of any legislation, the governor's approval or veto of any legislation, or the outcome of any administrative action.

Gov't Code § 305.022(b);¹ *see id.* § 305.002(1) ("Administrative action" means any matter that may be the subject of action by a state agency.) In short, that provision would prohibit a person² from agreeing to render services to influence a state agency to issue a permit if the person's compensation for doing so were contingent upon whether the agency issued the permit.³

The request letter sets out the following facts about the partnership in question here:

- The principal business of the partnership is the disposal of waste, in particular the development and operation of landfills.
- The partnership consists of two individual limited partners (Individual A and Individual B) and an entity that is a general partner (the Entity).
- Individual A is a registered lobbyist and a licensed real estate broker.
- Individual A has a four-year contract with the Entity to lobby administrative agencies, including the Texas Commission on Environmental Quality (TCEQ).
- Individual A "is expected to actively work with the TCEQ for the necessary approvals, in his capacity as a limited partner in the LP."
- Individual A and Individual B will receive shares in the limited partnership in exchange for a payment of \$100 and a promise to provide services, including locating tracts of land and dealing with the engineering, environmental, economic, and legal issues in determining whether a tract of land is suitable for a landfill. Communications to influence TCEQ action would not be among the services Individual A would be providing in exchange for an interest in the partnership. Individual A and Individual B will bear none of the costs of the partnership.

- After the partnership has found a suitable tract of land for a landfill, the partnership will contract to purchase the land. The contract will be contingent on the partnership's obtaining approval for the landfill from the TCEQ.
- Individual A's partnership interest will have no value if the partnership does not obtain approval for the landfill from the TCEQ.

The requestor asks whether the arrangement would violate section 305.022 of the Government Code.

An issue under section 305.022 would arise only if Individual A were receiving compensation for communications to influence legislative action and if the compensation were contingent on the outcome of the administrative action. As the requestor describes the facts, Individual A would not be receiving an interest in the partnership or anything else in exchange for his communications to the TCEQ. Because there would be no compensation *at all* for communications to influence, no issue under section 305.022 would arise.

SUMMARY

In the specific circumstances described in the request letter, there would not be a contingent fee for purposes of section 305.022 of the Government Code.

This conclusion is specifically limited to the stipulated facts set out herein. Each case involving these issues must be determined on its own facts.

¹The prohibition also applies to the other party to the agreement. Gov't Code § 305.022(a).

²This prohibition applies to any person, not just to a person required to be registered as a lobbyist.

³The illegality stems from the agreement, not from the payment or provision of the contingent compensation. In other words, an agreement for contingent compensation for efforts to influence administrative action would be impermissible regardless of the outcome of the transaction.