



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****

ETHICS ADVISORY OPINION NO. 530

August 7, 2015

Regarding whether a person appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee is a “state officer” for purposes of Chapter 572 of the Government Code. (SP-12)

A question has arisen whether a person appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee (CPRIT) is a “state officer” for purposes of Chapter 572 of the Government Code.

Chapter 572 requires certain individuals, including state officers, to file a personal financial statement with the Texas Ethics Commission (“commission”). Gov’t Code ch. 572, subch. B. A state officer is also subject to the standards of conduct provided by section 572.051 and certain provisions of the state “revolving door” law. *Id.* §§ 572.051, .054(b). A state officer is defined as “an elected officer, an appointed officer, a salaried appointed officer, an appointed officer of a major state agency, or the executive head of a state agency.” *Id.* § 572.002(12). An appointed 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, excluding an appointee to a vacated elective office.” *Id.* § 572.002(1) (C).

CPRIT is a state agency created by the Texas Constitution. Tex. Const. art. III, § 67. Its governing body is the Cancer Prevention and Research Institute of Texas Oversight Committee, which is composed of nine members, of which the governor, lieutenant governor, and speaker of the house of representatives each appoint three. Health & Safety Code § 102.101. The constitution provides that CPRIT’s members “*may* serve four-year terms.” Tex. Const. art. III, § 67(b) (emphasis added). Beginning in 2009, state law also provided that CPRIT’s members were required to “serve staggered six-year terms.” Health & Safety Code § 102.103(a) (Acts 2009, 81st Leg., R.S., ch. 368, § 3). In 2013, the legislature amended that law to state that the members “serve *at the pleasure of the appointing office* for staggered six-year terms.” Acts 2013, 83rd Leg., R.S., ch. 1150, § 12 (emphasis added). We recognize that the amendment may create some uncertainty regarding the status of CPRIT’s members as appointed officers under chapter 572 and issue this opinion to provide clarity regarding the application of that chapter.¹

In prior opinions, we have stated that a person who is appointed to an agency to “serve at the pleasure of” the appointing authority is not “appointed for a term of office” and therefore does not meet the definition of “appointed officer” under chapter 572 of the Government Code. *See, e.g.*, Ethics Advisory Opinion Nos. 180 (1994), 138 (1993), 124 (1993), 121 (1993), 1 (1992). Those determinations are supported by a Texas attorney general opinion that considered a previous definition of “appointed officer” that included, in part, “an officer of a state agency who is appointed for a term of office specified by the constitution or a statute of this state.”² Attorney General Opinion H-253 at 1 (1974). In that opinion, the attorney general considered whether an appointment “at his [the governor’s] pleasure” constitutes a term of office for purposes of the definition of “appointed officer.” *Id.* The attorney general stated that the legislature intended the phrase “‘term of office specified by the constitution or a statute of this state’ ... to refer to a specific, designated period of time,” and concluded that an officer who is appointed “at the pleasure” or “at the will” of an appointing authority is not

appointed for a term of office and is consequently not an “appointed officer.” *Id.* at 2. The Texas attorney general also considered a somewhat analogous statute that provided that the directors of an economic development corporation shall be appointed “for a term of no more than six years, and each of whom shall be removable by the unit for cause or at will,” and stated that the law did not establish a term of office for a director, but placed a six-year limit on any term that may be established. Attorney General Opinion JC-349 (2001).

By amending state law to provide that a member of CPRIT serves “at the pleasure of the appointing office,” it appears that the legislature intended for CPRIT members to be subject to removal by their appointing authority at any time.³ This is consistent with the principle that public officers generally serve for either a set term or at the pleasure of the appointing authority.⁴ Additionally, the legislature in 2013 amended CPRIT’s enabling legislation to requiring each CPRIT member to file with the chief compliance officer of the agency a personal financial statement “as required of a state officer” by section 572.021 of the Government Code. Health & Safety Code § 102.110. The legislature also required CPRIT to adopt a code of conduct applicable to its members and employees that includes provisions substantially similar to those applicable to state officers under section 572.051 of the Government Code. *Id.* § 102.109. Those requirements further indicate that the legislature intended to designate CPRIT, rather than the commission, as the filing authority for personal financial statements and to require its members to follow a particular set of ethical standards that are tailored to the agency. Thus, in our opinion, a member appointed to CPRIT is not “appointed for a term of office” and is not an “appointed officer” for purposes of chapter 572 of the Government Code. Accordingly, a member appointed to CPRIT is not a “state officer” under that chapter and is not required to file a personal financial statement with the commission or subject to the standards of conduct provided by section 572.051 or certain provisions under the “revolving door” law applicable to state officers under section 572.054(b).

SUMMARY

A member appointed to the Cancer Prevention and Research Institute of Texas Oversight Committee is not “appointed for a term of office” and is not an “appointed officer” for purposes of chapter 572 of the Government Code. Accordingly, a member appointed to the agency is not a “state officer” and is not required to file a personal financial statement with the commission or subject to the standards of conduct provided by section 572.051 or certain provisions under the “revolving door” law applicable to state officers under section 572.054(b).

¹ The members of the governing body of CPRIT are not elected and the agency is not identified as a “major state agency” by section 572.003 of the Government Code.

² The definition was located at article 6252-9b, section 2(3)(C), V.T.C.S., which was the predecessor to chapter 572 of the Government Code.

³ We note that state law also provides that if a vacancy occurs, “the appropriate appointing authority shall appoint a successor, in the same manner as the original appointment, to serve for the remainder of the unexpired term.” Health & Safety Code § 102.103(c). This provision does not clearly establish that a member serves for a fixed term.

⁴ See, e.g., *Aldine Indep. School Dist. v. Standley*, 280 S.W.2d 578 (Tex. 1955) (a public officer generally has a fixed term and may be removed only in accordance with the applicable provisions of law); Attorney General Opinion DM-114 (1992) (an officer who has a set term “is not subject to removal at the will of the appointing authority”); Attorney General Opinion JC-345 (2001) (distinguishing between tenure enduring at the pleasure of the creating power or fixed for a given period, which helps protect an officer’s independence from the control of others); Attorney General Opinion DM-149 (1992) (contrasting a public officer serving with a fixed term with a member serving at the will of a state commission).