



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 544

July 11, 2017

Whether the inspector general for the Health and Human Services Commission is a “state officer” required to file a personal financial statement under Chapter 572 of the Government Code. (SP-13)

This opinion addresses whether the inspector general for the Health and Human Services Commission (“HHSC”) is a “state officer” required to file a personal financial statement under Chapter 572 of the Government Code.¹

A state officer must file a personal financial statement with the Texas Ethics Commission. Gov’t Code § 572.026. The term “state officer” includes an “appointed officer,” which 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.” *Id.* §§ 572.002(1)(C), (9), (12) (emphasis added). The issue is whether the inspector general is an appointed “officer of a state agency” and, therefore, a state officer.

HHSC is a state agency, and the office of the inspector general (“the office”) is created within HHSC and assigned certain statutory responsibilities. *Id.* §§ 531.002, .102(a). The inspector general is appointed by the governor to serve for a statutory one-year term. *Id.* § 531.102(a-1). However, HHSC’s enabling statutes identify the inspector general as the “director of the office” rather than an “officer.” *Id.* § 531.102(a-1). The location of the office within HHSC, as an agency consisting of several other divisions, raises the question whether the inspector general is an “officer of a state agency” for purposes of Chapter 572.

In a prior opinion, we addressed whether a member of the board of directors of a state agency is an “appointed officer” when the agency’s statute identified its members as “directors” rather than “officers.” Ethics Advisory Opinion No. 70 (1992).² In resolving that issue, we considered legal authorities defining the term “state officer,” noting generally that the duties of the position rather than the title one holds determine whether a person is an officer. *Id.* A person is a “state officer” if the person exercises any sovereign function of government for the benefit of the public largely independent of anyone else’s control. *Id.* (citing *Aldine Indep. Sch. Dist. v. Standley*, 280 S.W.2d

¹ The office of inspector general was established in 2003. Act of June 2, 2003, 78th R.S., ch. 198, § 2.19(a), 2003 Tex. Gen. Laws 651.

² The opinion considered a nearly identical definition in a predecessor statute. See V.T.C.S. art. 6252-9b, § 2(1).

578, 583 (Tex. 1955)).³ Factors in determining whether an official exercises a sovereign function of government include: (1) the scope and significance of the official’s duties; (2) whether the duties are primarily provisional or ongoing; and (3) whether the official performs those duties in his own right, “exercising discretion without the oversight of others.” Tex. Att’y Gen. Op. No. GA-0584 (2007) (addressing the meaning of “state officer” for purposes of impeachment under article XV, section 7 of the Texas Constitution and chapter 665 of the Government Code).

The office of the inspector general is responsible for preventing and detecting fraud, waste, and abuse in the delivery of all health and human services throughout Texas. Gov’t Code § 531.102(a). The office enforces state laws relating to the provision of such services and has the authority to perform audits, reviews, inspections, and investigations. *Id.* §§ 531.102, .113, .118. The office may also conduct a performance audit on any program or project administered by HHSC or any agreement entered into by HHSC, including the performance of HHSC or a health and human services agency. *Id.* § 531.1025. Thus, the inspector general, as director of the office, has authority that is significant in its scope, continuous in nature, and extends statewide.

The office also exercises discretion without the oversight of others. By statute, HHSC and its executive commissioner are required to provide administrative support to the office and to adopt rules and policies in consultation with the office, including objectives, priorities, and performance standards.⁴ However, investigations conducted by the office are independent of HHSC and its executive commissioner. *Id.* § 531.102(a-6). Additionally, the office has authority to issue a subpoena in connection with an investigation and to impose a payment hold on a Medicaid provider under certain circumstances. *Id.* §§ 531.102(g)(2), .1021. Thus, it appears that the involvement of other HHSC officers and staff does not supersede the office’s discretion in meeting its statutory duties and obligations. Therefore, in our opinion, the inspector general exercises a portion of the sovereign power of government largely independent of anyone else’s control.⁵

In our opinion, based on the foregoing, the inspector general for HHSC is an officer of a state agency who is appointed for a term of office specified by statute and, thus, is an “appointed

³ See also *Knox v. Johnson*, 141 S.W.2d 698, 700 (Tex. Civ. App.—Austin 1940, writ ref’d) (“[A] position is a public office when it is created by law, with duties cast on the incumbent which involve an exercise of some portion of the sovereign power and in the performance of which the public is concerned, and which also are continuing in their nature and not occasional or intermittent.”). The attorney general has opined that the principal considerations in determining whether an official is a “state officer” are whether the official exercises a sovereign function of government and serves for a fixed term of office. Tex. Att’y Gen. Op. No. GA-0584 at 22.

⁴ See *id.* §§ 531.102(a-2), (a-3), (b), (e), (n), (p), (q), (v). The office is also required to coordinate with the executive commissioner regarding numerous functions, including audits and oversight, in part to minimize the duplication of activities. *Id.* §§ 531.102(a-5), (q), (w). HHSC’s internal audit division is also required to regularly audit the office. *Id.* § 531.102(a-4).

⁵ We also note that the inspector general serves for a term of office fixed by law and that the inspector general has, in practice, executed the constitutional oath of office and remained subject to confirmation by the Texas Senate. See Tex. Att’y Gen. Op. No. GA-0584 at 10 (service for a term fixed by law and taking the constitutional oath are additional factors supporting a person’s status as a state officer).

officer.”⁶ Therefore, the inspector general is a “state officer” required to file a personal financial statement under Chapter 572 of the Government Code.⁷

An additional question that has arisen is whether the principal deputy inspector general who assumes the responsibilities of the inspector general is also a “state officer.” Provided that the deputy has not been appointed as the inspector general by the governor, the individual is not a “state officer” and is therefore not required to file a personal financial statement under Chapter 572. *See* Ethics Advisory Opinion No 265 (1995).

SUMMARY

The inspector general for the Health and Human Services Commission is a “state officer” required to file a personal financial statement under Chapter 572 of the Government Code.

⁶ A “salaried appointed officer” is an appointed officer who receives or is authorized to receive a salary for state service but not a per diem or other form of compensation. *Id.* § 572.002(9). Chapter 572 includes specific deadlines for a salaried appointed officer to file a personal financial statement. *See* Gov’t Code § 572.026.

⁷ A personal financial statement will only be required for a person appointed to the office after the date of this opinion.

