



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 590

September 27, 2023

ISSUE

Whether receiving a fee contingent on the sale of services to an independent school district is prohibited by Section 305.022 of the Government Code. (*AOR-686*).

SUMMARY

No. The Section 305.022 contingency fee prohibition does not apply to actions of an independent school district.

FACTS

The requestor is a company that sells educational services. The requestor seeks to enter into a contingency fee arrangement with other businesses to facilitate the sale of educational services to independent school districts (ISDs) and individual public schools. Under the agreement, the requestor would receive a percentage fee for each sale its clients make to an ISD and individual Texas public schools.

ANALYSIS

Chapter 305 of the Government Code (“the Lobby Code”) generally regulates lobbying of the legislature and state officials and employees. Tex. Gov’t Code § 305.001.

At issue is the Lobby Code’s specific provision that prohibits a person from retaining or employing another person to “influence legislation or administrative action for compensation that is totally or partially contingent on . . . the outcome of any *administrative action*.” *Id.* § 305.022(a) (emphasis added).

The definition of “administrative action” includes only actions taken by the legislature or “a state agency or executive branch office,” *Id.* § 305.002(1); *see also, id.* § 305.002(4) (defining “member of the executive branch” as “an officer, officer-elect, candidate for, or employee of any state agency, department, or office in the executive branch of state government.”). Therefore, actions taken by units of government besides the legislature, state agency, or executive branch office of state government are beyond the reach of Section 305.022.

As a general rule, statewide jurisdiction is implicit in the term “state agency or department” as used in the Lobby Code. Tex. Ethics Comm’n Op. No. 101 (1992). The commission has long

held that a political subdivision is not a state agency or in the executive branch of state government. Tex. Ethics Comm'n Op. No. 178 (1993) ("A metropolitan transit authority is a political subdivision, not a state agency"); Tex. Ethics Comm'n Op. No. 106 (1992) (finding a county is a political subdivision, not "one of the branches of 'state' government").

We reached this conclusion because "[t]he definitions of 'member of the legislative branch' and 'member of the executive branch' make clear that those terms refer to the legislative and executive branches of 'state' government," not political subdivisions. Tex. Ethics Comm'n Op. No. 106 (1992). For example, Section 305.003(b-1) of the Government Code lists an "employee of a political subdivision" separately from "a member of the judicial, legislative, or executive branch of state government" when providing an exception to lobby registration. *See also* Tex. Gov't Code § 305.026 (defining "political subdivision" to include a "school district").

At least for the purposes of the Lobby Code, an ISD is a political subdivision and not a state agency or member of the executive branch of state government. *Id.* § 305.026; see generally, Chapter 11, Texas Education Code. Therefore, the Section 305.022 contingent fee restriction does not apply to actions taken by an ISD or individual public school belonging to an ISD.