

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-1

Re: Would continued lobby activity in other states constitute a conflict of interest with the office of state representative?

This opinion responds to a request (AOR 1983-1) dated November 16, 1983, for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on December 13, 1983, and relates to the following issue:

Would continued lobby activity in other states constitute a conflict of interest with the office of state representative under Article 6252-9b, Vernon's Annotated Civil Statutes?

There are no restrictions on the type of private employment a member of the Texas House of Representatives or a candidate for that office may hold in addition to legislative duties. The Texas legislature is traditionally a citizens' legislature and includes members from all walks of life.

Sections 7 and 8, Article 6252-9b, Vernon's Annotated Civil Statutes, delineate prohibitions on legislators and standards of conduct for all state officers and employees.

Section 7 of that article merely prohibits a legislator from representing for compensation another person before an executive agency except under limited circumstances. That section would not apply to AOR 1983-1, unless the requester is elected to the legislature, and then would only prohibit certain activities. It does not act as a bar to seeking or holding office.

Section 8, Article 6252-9b, V.A.C.S., which defines standards of conduct for state officers and employees, includes in subdivision (c), the warning against employment "which could reasonably be expected to impair his independence of judgement in the performance of his official duties." In an interpretation of this section, the attorney general has stated:

If the role of the legislator-member of a private organization's legislative committee involved actual representation of the private group's interest such activity would plainly be improper. If on the other hand the committee member's function did not involve actual lobbying, it is possible that such a role would be permissible . . .

the member would have to examine his relationship with the private organization's committee in light of article 6252-9b to determine if it is consistent with the standards outlined there. The determination is largely one of fact and is ultimately subject to the consideration of the house of the Legislature of which the individual is a member. Texas Constitution art. 3, §11; Op. Tex. Att'y Gen. No. H-614 (1975); Ex parte Youngblood, 251 S.W. 509, 510 (Text Crim. App. 1923). Op. Tex. Att'y Gen. No. H-688 (1975).

As indicated in that opinion, and in related attorney general opinions, the mere potential for a conflict of interest does not act as a prohibition. Those attorney general opinions state that each situation represents a question of fact as to whether any specific activity constitutes a violation of the law. See Op. Tex. Att'y Gen. Nos. H-614 (1975), H-1223 (1978), MW-206 (1980).

It is, therefore, the opinion of the Commission that continued employment by a private corporation and continued lobby activity in other states does not prohibit an employee of that corporation from being a candidate for a seat in the Texas House of Representatives or from serving in that office, if elected.

Whether or not an employee/member's lobbying activity may create a conflict of interest with respect to a specific vote or official position by the legislator is not addressed by this opinion.

SUMMARY

Continued employment by a private corporation and continued lobby activity in other states does not prohibit an employee of that corporation from being a candidate for a seat in the Texas House of Representatives or from serving in that office, if elected. Whether or not an employee/member's lobbying activity may create a conflict of interest with respect to a specific vote or official position by the legislature is not addressed by this opinion.

W. Page Keeton, Chairman
State Ethics Advisory Commission
Adopted this 13th day of January, 1984.