

STATE ETHICS ADVISORY COMMISSION

ADVISORY OPINION 1984-24

Re: Is it permissible for the executive director of a state regulatory agency to render services and accept compensation as a consultant to a corporation engaged in the regulated business practice of the industry outside the state of Texas?

This opinion responds to a request (AOR 1984-28) for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on February 24, 1984, and relates to the following issue:

Is it permissible for the executive director of a state regulatory agency to render services and accept compensation as a consultant to a corporation engaged in the regulated business practice of the industry outside the state of Texas? Additionally, if the above answer is yes, is there any limit on the amount of compensation that the state employee can accept for services rendered, provided that the service is not rendered during state working hours? Moreover, is the employee required to report the compensation as a result of Texas statutes and if so, in what manner?

Tex. Rev. Civ. Stat. Ann. art. 6252-9b, § 8, which defines standards of conduct for state officers and state employees, states in pertinent part as follows:

(b) No state officer or state employee should accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official position.

(c) No state officer or state employee should accept other employment or compensation which could reasonably be expected to impair his independence of judgment in the performance of his official duties.

As a state employee, an executive director of a state regulatory agency should not accept additional employment which could impair his independence of judgment in the performance of his duties as executive director or which could induce him to disclose confidential information. Whether the employment in question falls within this category is ordinarily a question of fact which cannot be resolved in the opinion process. S.E.A.C. Op. No. 1984-1; Op. Tex. Att'y Gen. Nos. H-614 (1975), H-1223 (1978), MW-206 (1980). However, the Commission notes that in some cases, the nature of the employment and the amount of compensation may be such as to make the employment clearly improper as a matter of law.

State law places no limit on the amount of compensation that a state employee may accept for permissible employment not performed during state working hours. While the law places no limit on the amount of compensation, that compensation may be large enough to adversely affect the employee's independence of judgment in violation of the statute.

Article 6252-9b, § 3 requires the executive head of a state agency to file a financial statement with the secretary of state within 45 days after the date he assumes the duties of the position and on or before the last Friday in April of each year.

The financial statement must include a list of all sources of occupational income, with each source identified by employer. Tex. Rev. Civ. Stat. Ann. art. 6252-9b, § 4 (c)(1).

Therefore, an executive director of a state agency who also renders services and accepts compensation as a private consultant must report this additional source of occupational income on his financial statement. Tex. Rev. Civ. Stat. Ann. art. 6252-9b, § 2 (6) (definition of "executive head" includes an executive director)

SUMMARY

A state employee should not accept employment which he might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official position nor should he accept other employment which could reasonably be expected to impair his independence of judgment in the performance of his official duties. Although, there is no limit on the amount of compensation that a state employee can accept for services rendered to a private corporation outside of his state working hours, that amount may be such as to affect his independence of judgment in violation of art. 6252-9b. The executive director of a state agency is required to report the source of such compensation on the financial statement filed with the secretary of state under art. 6252-9b.

W. Page Keeton, Chairman
State Ethics Advisory Commission
Adopted this 14th day of September, 1984.