

# STATE ETHICS ADVISORY COMMISSION

## ADVISORY OPINION 1984-26

Re: A state official owns an interest in a sole proprietorship, partnership, or corporation which offers aircraft for lease in the regular course of business. May the state official lease an airplane from the sole proprietorship, partnership, or corporation for his use on official business? Travel expenses thus incurred would be reimbursed by the State at the usual rate allowed for travel by leased aircraft.

This opinion responds to a request (AOR 1984-36) dated August 2, 1984, for a State Ethics Advisory Commission opinion. The request was received by the Commission at its meeting on September 14, 1984, and relates to the following issue:

A state official owns an interest in a sole proprietorship, partnership, or corporation which offers aircraft for lease in the regular course of business. May the state official lease an airplane from the sole proprietorship, partnership, or corporation for his use on official business? Travel expenses thus incurred would be reimbursed by the State at the usual rate allowed for travel by leased aircraft.

Section 1 of art. 6252-9b, Vernon's Annotated Civil Statutes, delineates prohibitions and standards of conduct for all state officers and employees. Section 1 reads in pertinent part:

It is the policy of the State of Texas that no state officer or state employee shall have any interest, financial or otherwise, direct or indirect, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest.

It would appear that the leasing of an aircraft from a proprietorship, partnership, or corporation, in which a state officer has a direct interest, would be contrary to the policy set forth in art. 6252-9b, sec. 1, which enjoins a state officer from engaging in business transactions which are in substantial conflict with the officer's duties. The fact that the travel is for official business does not diminish the appearance of impropriety. Regardless of the nature of the travel of the state officer, the proprietorship, partnership, or corporation of which the officer has an interest will benefit as a result of this business transaction, thereby enhancing the interest which the state officer possesses in the business. In a similar fact situation, the Attorney General ruled that "[t]he Department of Health is prohibited by the doctrine of Meyers v. Walker, 276 S.W. 305 (Tex. Civ. App. - Eastland 1925, no writ) from purchasing supplies from a business wholly or partially owned by a member of the Board of Health." Op. Tex. Att'y Gen. No. MW-179 (1980).

The text from 81A C.J.S. States § 156 (1977) addresses the problem of contractual conflicts of interest with respect to state officers. It reads in pertinent part:

Both at common law, and under constitutional or statutory provisions, legislators or other state officers must not be interested in any contract made by them in their official capacity, and a contract made by an interested officer does not bind the state . . . . The interest in a contract which disqualifies a public official from executing the contract in his official capacity has been described as an interest that prevents a public official from giving to the public that impartial and faithful service which public officials are duty bound to render.

The potential for conflict of interest investments has been recognized and addressed by the Texas Legislature. Article 6252-9b, V.A.C.S., §8 (c) and §8 (d) state:

(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.

(d) No state officer or state employee should make personal investments which could reasonably be expected to create a substantial conflict between his private interest and the public interest.

Although these provisions are meant to serve as a guide for state officers, the Commission believes that they reflect the concern of the legislature with the possibility of state officers entering into investments or contracts which could compromise the integrity of their offices. It should also be noted that the Texas Constitution prohibits legislators from being interested in certain public contracts. Article III, § 18 of the Constitution reads in pertinent part:

. . . nor shall any member of the Legislature be interested, either directly or indirectly, in any contract with the State, or any county thereof, authorized by any law passed during the term for which he was elected.

These safeguards are designed to prevent state officers from benefiting privately from their official duties. It is the opinion of the Commission that a state officer who leases an airplane for official business from a proprietorship, partnership, or corporation in which he has an interest would create a substantial conflict of interest and violate the public's trust.

#### SUMMARY

A state officer should not lease an airplane from a proprietorship, partnership, or corporation in which he or she has an interest for his use on official state business.

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

6 - VOTING IN FAVOR FORMAL DISSENT FILED B MR. HAROLD HAMMETT