



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 14, 1988

Mr. Kenneth DeJarnett
Chairman
Texas Housing Agency
P. O. Box 13941
Austin, Texas 78711-3941

LO-88-43

Dear Mr. DeJarnett:

Thank you for your letter of March 4, 1988, in which you ask several questions about hiring an acting executive administrator. The Texas Housing Agency was created by Acts 1979, 66th Leg., ch. 823 (art. 12691-6, Vernon's Texas Civil Statutes). Section 6(b) of that statute authorizes the board of directors to employ an executive administrator, and section 7(a) authorizes the administrator to exercise a broad range of powers and functions. The enabling statute does not prescribe any qualifications for the position. We will respond to your questions as you posed them in your letter.

1. May an acting executive administrator be named without the posting of public notice?

Article 6252-11b, V.T.C.S., §2(a) provides:

When a job vacancy occurs or is filled in Travis County within a state agency, the agency shall complete and submit to the commission and to the equal employment office as soon as possible the appropriate information form prescribed by the commission regarding the job vacancy or placement.

Nothing in article 6252-11b prohibits a state agency from filling a vacancy before notice is posted. Rather, it requires a state agency to provide information about a vacancy to the Texas Employment Commission as soon as possible after a vacancy occurs. Compliance with that requirement will generally result in notice being posted before a vacancy is filled.

2. If posting of the position is required, what is the minimum time period before an applicant can be named to the position?

Section 4(a) of that statute requires that the employment commission post such vacancies for 10 working days "unless notified by the agency that the vacancy has been filled." The statute does not prescribe a minimum time period before the vacancy can be filled.

3. May a person under contract as a consultant to a state agency serve as the chief officer, or any officer, of another state agency? Would this arrangement violate the state's ethics law?

4. May a person who is currently or was previously under contract to a state agency be hired as the acting administrator of the same agency?

Article 6252-11c, V.T.C.S., governs the use of private consultants by certain state agencies. Section 6B of that act requires that a person offering to perform consulting services disclose prior employment with the agency to which he is making the offer or with another agency. Article 6252-9b, V.T.C.S., prescribes standards of conduct for state officers and employees by prohibiting those public servants from engaging in a variety of activities that might create a conflict between private interests and public duties. The question of whether a particular activity or situation creates or might create a prohibited conflict of interest is generally a fact question that cannot be resolved by the opinion process and should be determined by the agency. See Attorney General Opinion Nos. JM-745 (1987); H-1223 (1978); H-688 (1975).

5. Is it possible to extend an existing consulting contract to incorporate broad new administrative duties without publishing notice?

The expansion of the consultant's duties would constitute a new contract, and if the anticipated fee for the new duties would exceed \$10,000, the agency would have to comply with the requirements of article 6252-11c, V.T.C.S. See also V.T.C.S. art. 6252-11c, §6(d).

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6. If a contract amendment is required, what is the minimum period of notice to the public before an award may be made?

Article 6252-11c, section 6(a), V.T.C.S., requires that, at least 40 days before contracting, information concerning an invitation for offers of consulting services be filed with the Secretary of State for publication in the Texas Register. That time period is required regardless of whether the proposed contract is new or a continuation of a service as provided in section 6(d).

7. Is there a conflict of interest (as defined under the statute) for a person to serve as the acting administrator of a state agency and the chairperson of a local authority which is now or may in the future be engaged in the same or similar business?

8. Are the acts of an acting administrator valid if that person is declared unqualified to serve? If so, is there any potential penalty to the agency, the board who appointed the person, or the person serving as acting administrator?

Questions about conflicts of interest turn on specific facts. Therefore, we cannot respond to your general questions.

We also note that the Texas Housing Agency is not currently receiving any funds under the General Appropriations Act. If the agency is receiving federal funds, it may be required by federal laws or regulations and article 6252-11g, V.T.C.S., to establish personnel policies and procedures that comply with federal requirements.

Very truly yours,



Sarah Woelk
Assistant Attorney General
Opinion Committee

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