



Office of the Attorney General  
State of Texas

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May 2, 1996

Ms. Johanna McCully-Bonner  
General Counsel  
Texas Department of Housing  
and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711-3941

Letter Opinion No. 96-043

Re: Whether the term "organization"  
in Government Code section 2306.028  
includes a city (ID# 34647)

Dear Ms. McCully-Bonner:

The Texas Department of Housing and Community Affairs (the "department") requests advice about a statute that disqualifies certain individuals from appointment as a public member of the board of directors of the department. The board of directors consists of nine members appointed by the governor. Gov't Code § 2306.024. Six places on the board are reserved for individuals representing particular kinds of entities, such as lending institutions and local government. *Id.* § 2306.027. Three places are reserved for public members. *Id.* Section 2306.028 of the Government Code states the following disqualification for service as a public member of the board:

An individual is not eligible for appointment as a public member of the board if the individual or the individual's spouse:

(1) is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department;

(2) owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization regulated by the department or receiving funds from the department; or

(3) uses or receives a substantial amount of tangible goods, services, or funds from the department, other than compensation or reimbursement authorized by law for department membership, attendance, or expenses.

It is a ground for removal if a public member does not maintain the qualification required by this section. *Id.* § 2306.033.

You state that a public member of the board has been offered employment as director of development for a Texas city. You ask whether a city is an "organization" within section 2306.028, so that acceptance of the position might affect this person's eligibility to serve as a public member of the board.

In our opinion, an "organization" within section 2306.028 does not include a city. The Code Construction Act provides as follows:

(a) Words and phrases shall be read in context and construed according to the rules of grammar and common usage.

(b) Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

*Id.* § 311.011; *see also Texas Power & Light Co. v. Jacobs*, 323 S.W.2d 483, 491 (Tex. Civ. App.--Waco, 1959, writ ref'd n.r.e.).

The legislature has not defined "organization" for purposes of chapter 2306 of the Government Code. Section 2306.004 of the Government Code defines over twenty terms for purposes of chapter 2306, including "local government," "municipality," and "public agency," but "organization" is not among them. Gov't Code § 2306.004(17), (21) - (22). A dictionary defines "organization" as "an administrative and functional structure (as a business or a political party)," and gives "association" and "society" as synonyms. WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 831 (1990). Thus, the term "organization" is commonly used to describe a nonpublic entity. In the context of section 2306.028, which refers to a "business entity or other organization," it may mean a nonprofit private entity, in contrast to a profit-making business entity. *See Letter Opinion No. 93-52 (1993) at 2 (business entity in conflict-of-interest provision does not include nonprofit business).*

In construing a word in a statute, a court may take into consideration the meaning of the same word used elsewhere in the act. *L&M-Surco Mfg., Inc. v. Winn Tile Co.*, 580 S.W.2d 920, 926 (Tex. Civ. App.--Tyler 1979, writ dism'd); *see Brown v. Darden*, 50 S.W.2d 261, 263 (Tex. 1932). The term "organization" also appears in subsection (2) of section 2306.028, but in that provision it cannot be read to include a city. Section 2306.028(2) disqualifies from service as a public member a person who "owns or controls, directly or indirectly, more than a 10 percent interest in a business entity or other organization . . . receiving funds from the department." An "organization" within subsection (2) could not include a city, since individuals do not own or control an interest in a city.

We believe that the legislative history of section 2306.028 also demonstrates that the disqualifications that section 2306.028 describes were not directed at persons who are employed by a city. Section 2306.028 was adopted in 1991, as section 1.08 of article 4413(501), V.T.C.S. Act of May 26, 1991, 72d Leg., R.S., ch. 762, § 1.08, 1991 Tex. Gen. Laws 2672, 2681.<sup>1</sup> Section 1.08 was an "across-the board recommendation" of the

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<sup>1</sup>This law abolished the Texas Housing Agency and the Texas Department of Community Affairs, creating the department and transferring their functions to it.

Gen. Laws 2672, 2681.<sup>1</sup> Section 1.08 was an “across-the board recommendation” of the Sunset Advisory Commission (the “commission”), a standard statutory provision that the commission included in its legislative recommendations for all agencies undergoing sunset review. SUNSET ADVISORY COMMISSION, RECOMMENDATIONS TO THE GOVERNOR OF TEXAS AND MEMBERS OF THE SEVENTY-SECOND LEGISLATURE, FINAL REPORT 5, 118 (May 1991). Thus, the language found in section 2306.028 of the Government Code was not drafted specifically for the department, but for state agencies in general, including licensing and regulatory agencies.<sup>2</sup>

The commission gave the following reason for including a conflict-of-interest provision in its across-the board recommendations:

An agency may develop close ties with professional trade organizations<sup>3</sup> and other interested groups which may not be in the public interest. Conflict-of-interest provisions are necessary to prevent these kinds of relationships from developing.

*Id.* at 5 (footnote added). The conflict-of-interest provisions developed by the commission were directed at a board member’s interest in a private entity, not a governmental entity. We conclude, based on the language and legislative history of section 2306.028 of the Government Code, that the word “organization” in this provision does not include a city.

You also ask whether the term “organization” in section 2306.028 of the Government Code includes governmental entities generally, such as political subdivisions, special districts, and state institutions of higher education. For the same reasons that we concluded that this term does not include a city, we conclude that it does not include other governmental entities.

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<sup>1</sup>This law abolished the Texas Housing Agency and the Texas Department of Community Affairs, creating the department and transferring their functions to it.

<sup>2</sup>Conflict-of-interest provisions virtually identical to those in section 2306.028 of the Government Code are found in legislation applicable to several other state agencies. See V.T.C.S. art. 41a-1, § 4 (Board of Public Accountancy), art. 8451a (Texas Cosmetology Commission); Gov’t Code §§ 481.0042 (Department of Commerce), 801.1021 (Pension Review Board); Health & Safety Code §§ 11.006 (Board of Health), 461.005(a) (Commission on Alcohol and Drug Abuse); Hum. Res. Code § 101.001(b) (Texas Department on Aging).

<sup>3</sup>Conflict-of-interest provisions applicable to some state agency governing boards disqualify from board membership any person who is an officer, managerial employee, or paid consultant of a trade association in the field regulated by the board. See V.T.C.S. art. 4512q, § 4(d) (Board of Nursing Facility Administrators); Health & Safety Code § 11.006 (Board of Health). Relatives of an officer, managerial employee, or paid consultant of such trade association are also sometimes disqualified from service on the state agency board. See, e.g., V.T.C.S. art. 4512g, § 4(d).

Finally, we point out that another conflict-of-interest statute applies to officers and employees of the department. Section 572.051 of the Government Code provides in part that state officers and employees should not

(2) accept other employment or engage in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position;

(3) accept other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties.

Gov't Code § 572.051.

Whether a board member would violate these provisions by holding another employment is a fact question, to be decided by the board in the first instance. See Attorney General Opinions H-1223 (1978) at 2, H-688 (1975) at 2.

### S U M M A R Y

Section 2306.028 of the Government Code disqualifies an individual from serving as a public member of the Department of Housing and Community Affairs if the individual is employed by or participates in the management of a business entity or other organization regulated by the department or receiving funds from the department. The word "organization" in section 2306.028 of the Government Code, does not include a city, nor does it include governmental entities generally, such as political subdivisions, special districts, and state institutions of higher education.

Section 572.051 of the Government Code provides that a state officer should not accept other employment that might reasonably be expected to require or induce him or her to disclose confidential information acquired by reason of being an officer. Nor should a state officer accept other employment or compensation that could reasonably be expected to impair his or her independence of judgment in the performance of the officer's official duties. Whether

a board member's acceptance of a particular employment would violate these provisions is a fact question, to be decided by the board in the first instance.

Yours very truly,

A handwritten signature in cursive script that reads "Susan L. Garrison".

Susan L. Garrison  
Assistant Attorney General  
Opinion Committee