



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**JOHN L. HILL
ATTORNEY GENERAL**

March 14, 1974

The Honorable Betty J. Anderson
Executive Secretary
Texas State Board of Examiners
in the Basic Sciences
1012 Sam Houston State Office Bldg.
Austin, Texas 78701

Opinion No. H- 255

Re: Application of House
Bill 1, 63rd Leg., the
Ethics Bill, to officers
of an agency not named
therein.

The Honorable W. Forrest Smith
Chairman, Texas Youth Council
P. O. Box 900
Dallas, Texas 75221

Dear Mrs. Anderson and Mr. Smith:

Article 6252-9b, the Ethics Law adopted by the 63rd Legislature (Acts 1973, ch. 421, p. 1086) lists in its Sec. 3(a) as those who are required to file a financial statement "every [1] elected officer, [2] salaried appointed officer, [3] appointed officer of a major state agency, and [4] executive head of a state agency . . . " Each of these is defined in Sec. 2.

"Sec. 2. In this Act:

"(1) 'State officer' means an elected officer, an appointed officer, or the executive head of a state agency as defined in this section.

"(2) 'Elected officer' means:

"(A) a member of the legislature;

"(B) an executive or judicial officer elected in a statewide election;

"(C) a judge of a court of civil appeals, a district court, a court of domestic relations, or a juvenile court created by special law;

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- "(D) a member of the State Board of Education; or
- "(E) a person appointed to fill a vacancy or newly created office who, if elected rather than appointed, would be an elected officer as defined in paragraph (A), (B), (C), or (D) of this subdivision.
- "(3) 'Appointed officer' means:
 - "(A) the secretary of state;
 - "(B) an individual appointed with the advice and consent of the senate to the governing board of any state-supported institution of higher education;
 - "(C) an officer of a state agency who is appointed for a term of office specified by the constitution or a statute of this state, excluding a person appointed to fill a vacancy in an elective office; or
 - "(D) a person who is not otherwise within the definition of elected officer, appointed officer, or executive head of a state agency, but who holds a position as a member of the governing board or commission of a state agency acquired through a method other than appointment.
- "(4) 'Salaried appointed officer' means an appointed officer as defined in this Act who receives or is authorized to receive for his services to the state a salary as opposed to a per diem or other form of compensation.

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"(5)(A) 'Appointed officer of a major state agency' means any of the following:

[twenty-seven agencies are then listed including neither the State Board of Examiners in the Basic Sciences nor the Texas Youth Council]

" . . .

"(6) 'Executive head' of a state agency means the director, executive director, commissioner, administrator, chief clerk, or other individual not within the definition of appointed officer who is appointed by the governing body or highest officer of the state agency to act as the chief executive or administrative officer of the agency. The term includes the chancellor or highest executive officer of a university system and the president of a public senior college or university as defined by Section 61.003, Texas Education Code, as amended.

. . . "

The State Board of Examiners in the Basic Sciences consists of six members appointed by the Governor for a term of six years, subject to the consent and confirmation of the Senate (Article 4590c, Sec. 3, V. T. C. S.). Each member is to receive \$25 per day "for each day actively engaged in the discharge of his duties" plus "actual expenditures" (Ibid., Sec. 4). Section 4a of the Article, added in 1967 (Acts 1967, 60th Leg., ch. 711, p. 1834) directs the employment of an Executive Secretary.

The Texas Youth Council consists of three members appointed by the Governor with the consent of the Senate for terms of six years. They are to receive a per diem of \$10 per day, not to exceed 60 days for any fiscal year plus actual expenses. They are to employ a full-time Executive Director. Article 5143d, Sec. 4, V. T. C. S.

Mrs. Anderson's question is:

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"The members of the Texas State Board of Examiners in the Basic Sciences respectfully request your opinion as to whether or not the members of this Board and the employees and staff of this Board would be subject to the provisions of House Bill 1 [Article 6252-9b, supra] by virtue of the fact that this agency is not named in Subsection (5)(A) of Section 2 of House Bill 1."

Mr. Smith asks:

"My question is whether members of the Texas Youth Council are 'state officers' or 'appointed officers', defined in Section 2 of the Act, and, if so, whether we are required to file financial statements as provided in Section 3 of the Act."

The members of the State Board of Examiners in the Basic Sciences and of the Texas Youth Council are not required to file the financial statements called for by Sec. 3 of the Ethics Act. Although they are "appointed officers" within the definition of Sec. 2(3) of the Ethics Act, they are not elected officers, they are not salaried appointed officers and, neither agency being one of the twenty-seven named major state agencies, they are not appointed officers of a major state agency. Finally, they do not meet the Sec. 2 definition of executive head of a state agency.

Though agency members are not required to file the Sec. 3 statement, that circumstance does not excuse members or staff from otherwise complying with the Act.

Section 5, requiring an affidavit from an appointed officer not required to file a financial statement who has, acquires, or divests himself of a substantial interest in a business entity which is subject to regulation by a state agency or does business with a state agency, applies to the members of each board, which is not listed as a "major state agency".

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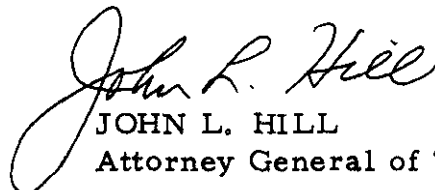
The Executive Secretary of the Board of Examiners and the Executive Director of the Youth Council, in our opinion, probably meet the Sec. 2(6) definition of "executive head of a state agency" and, as such, will have to file the financial statement required by Sec. 3, if in fact, they are appointed "to act as the chief administrative or executive officer of the agency." See Attorney General Opinion No. H-190 (1973).

Of course, all of these persons and all other employees of these agencies are subject to the "standards of conduct" of Sec. 8 of the Act.

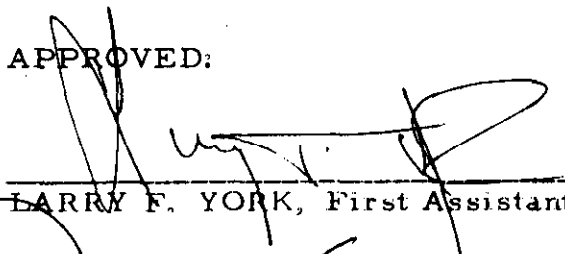
S U M M A R Y

The unsalaried, appointed members of a board or a state agency, not named as a "major state agency" in the Ethics Act, Article 6252-9b, are not required to file a financial statement, but are required to file an affidavit showing any involvement in regulated activities. The person appointed to act as the chief executive or administrative person in such an agency is required to file the financial statement. The board members, the executive head and all other staff members and employees are governed by the Standards of Conduct.

Very truly yours,


JOHN L. HILL
Attorney General of Texas

APPROVED:


LARRY F. YORK, First Assistant


DAVID M. KENDALL, Chairman
Opinion Committee