



TEXAS HOUSE *of* REPRESENTATIVES

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District 128

CHAIR, HOUSE COMMITTEE ON ELECTIONS
MEMBER, HOUSE COMMITTEE ON BUSINESS & INDUSTRY

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General Paxton,

In 1997, the 75th Legislature passed Senate Bill 645, which codified Section 556.006 of the Texas Government Code.¹ In it, the Legislature prohibited a state agency from using “appropriated money to attempt to influence the passage or defeat of a legislative measure.”²

Within Section 556.001 of the Texas Government Code a “state agency” is defined in relevant part as, “a department, commission, board, office, or other agency in the executive branch of state government, created under the constitution or a statute, with statewide authority.”³ Furthermore, in this section, “appropriated money” is defined as “money appropriated by the legislature through the General Appropriations Act or other law.”⁴

The first question posed by this request asks: **Is the Texas Windstorm Insurance Association deemed a state agency solely for the purposes of Texas Government Code Chapter 556?**

The first part of this examination appears to encompass two prongs regarding the nature of the Texas Windstorm Insurance Association (“TWIA”). First, whether it is an entity created under state statute and second, whether it also possesses statewide authority.

The Texas Legislature established TWIA in 1971 to provide wind and hail insurance coverage to Texans unable to obtain private insurance in Coastal Counties.⁵ TWIA is governed under Chapter 2210 of the Texas Insurance Code.⁶ Under this statute, TWIA is subject to several avenues of legislative and administrative oversight and benefits from the auspices of state authority and institutions. The Commissioner of the Texas Department of Insurance oversees and

¹ 1997 Tex. Sess. Law Serv. Ch. 1035 (S.B. 645) (VERNON'S).

² Tex. Gov't Code § 556.006.

³ *Id.* at § 556.001 (2)(a).

⁴ *Id.* at § 556.001 (1).

⁵ TWIA—About Us, <https://www.twia.org/about-us/overview/>.

⁶ Tex. Ins. Code § 2210.



establishes rules for the Association.⁷ All property insurance companies licensed to operate in Texas are compelled to be members of the Association.⁸ TWIA members are assessed by the Association when certain loss events occur.⁹ TWIA deposits certain revenue into a state fund that the Comptroller invests.¹⁰¹¹ TWIA is subject to the Texas Sunset Act.¹² The functions, powers, duties, operations, proscriptions, and obligations of the Association are fully dictated by either state law or Texas Department of Insurance Rule.¹³ Undoubtedly, these facts could signify the association is created by statute.

As for its statewide authority, the Association appears to possess authority in several different aspects with statewide implications. First, all Texas property insurers are Association members per the enabling statute.¹⁴ Second, members are subject to Association assessments during certain loss events.¹⁵ Third, the Association directs many of its own operations at the specific direction of statute. In addition to its authority to issue assessments, TWIA has the authority to purchase reinsurance on behalf of its members and request the issuance of public securities.¹⁶¹⁷ With its ability granted to it under statute to direct Texas property insurers to pay assessments and the autonomy it enjoys to direct some of its functions, the statewide authority prong of this analysis could suggest it meets this criteria.

The next part of this first inquiry is whether TWIA uses “appropriated money.” This question entails the definition in statute which defines “appropriated money” as “money appropriated by the legislature through the General Appropriations Act or other law.”¹⁸

While receiving no appropriations by the Legislature, TWIA does collect premiums from policyholders which are considered state funds when placed in the Association’s Catastrophe Reserve Trust Fund.¹⁹ A prior attorney general opinion gave the meaning of state funds a wide ambit for the purposes of Texas Government Code Chapter 556.²⁰ In the opinion, regarding the

⁷ *Id.* at § 2210.008.

⁸ *Id.* at § 2210.051.

⁹ *Id.* at § 2210.0725.

¹⁰ *Id.* at § 2210.452.

¹¹ *Id.* at § 2210.4521.

¹² *Id.* at § 2210.002.

¹³ *Id.* at § 2210.

¹⁴ *Id.* at § 2210.051.

¹⁵ *Id.* at § 2210.0725.

¹⁶ *Id.* at § 2210.075.

¹⁷ *Id.* at § 2210.604.

¹⁸ Tex. Gov’t Code § 556.001 (1).

¹⁹ Tex. Ins. Code § 2210.452.

²⁰ Tex. Atty. Gen. Op. JC-0161 (Tex.A.G.), 1999 WL 1271772.



Texas Council for Developmental Disabilities, the Attorney General concluded the Council did use state funds even though it only acted as a conduit for federal monies directed to the state for the administration of a federal program.²¹ The decision hinged in-part on the finding the Council “uses the resources of a state-funded agency and coordinates state funds used by another state entity.” TWIA receives much of its direction and oversight from the Texas Department of Insurance, including approval for its rates, its plan of operations, and its administrative rules.²² In this way, TWIA is similar to the Texas Council for Developmental Disabilities as cited in the aforementioned Attorney General opinion because it benefits from the support of a state-funded agency. Furthermore, TWIA also uses state funds when paying claims out of the Association’s Catastrophe Reserve Trust Fund and this use is central to the administration of the Association.²³ In this other way it is similar to the Texas Council for Developmental Disabilities.

The above recited points of law appear critical in weighing the issue of whether TWIA is a state agency solely for the purposes of Texas Government Code, Chapter 556.

The second part of this request poses the question: **If TWIA is deemed a state agency for the purposes of Chapter 556, has it violated this statute by meeting with legislative staff regarding House Bill 769 from the 87th Legislative Session?**

Texas Government Code Section 556.006(b) contains the caveat to the prohibition contained in subsection (a) and it reads, “This section does not prohibit a state officer or employee from using state resources to provide public information or to provide information responsive to a request.”²⁴

During the 87th Session, House Bill 769 as passed by the Texas House contained several provisions relating to the administration of TWIA.²⁵ Among other things, the bill would have required the relocation of the TWIA headquarters to a first or second tier coastal county. Records from TWIA indicate that, before HB 769 passed the House in late April of 2021, staff from the Association met with seven House members and the Speaker of the House on their “concerns” with TWIA Headquarters relocation. Shortly after House engrossment, staff from the Association met with staff of the Governor once, staff of the Lieutenant Governor once and staff

²¹ *Id.*

²² Tex. Ins. Code § 2210.

²⁴ Tex. Gov’t Code § 556.006(b).

²⁵ H.B. 769, 2021 Leg., 87th Sess. (Tex. 2021).



of members of the Texas Senate or a Senate on six separate occasions to discuss TWIA's "concerns" with the relocation of their headquarters.

By the letter of Texas Government Code Section 556.006(b) it would appear that a discussion of concerns is beyond the scope of "providing public information" or "providing public information responsive to a request" as is authorized by the statute.

First, by its own records, TWIA admits to have the meetings to "discuss concerns" rather than "provide information" regarding the TWIA headquarters relocation. While it seems likely that TWIA's discussion of concerns conveyed information, the use of the word "concerns" has an interesting connotation in the context of potential legislative lobbying by a state agency.

Here, the word "concern" is used as a noun. The Merriam-Webster English Dictionary defines the word "concern" when used as a noun to mean, "marked interest or regard usually arising through a personal tie or relationship" and "an uneasy state of blended interest, uncertainty, and apprehension." Both of these definitions impute an interest on behalf of the person who possesses the concern. Here, in its use in the record, the use of the word "concerns" regarding the relocation of TWIA Headquarters exposes the potential for a violation Section 556.006. This is attributed from the use of the word "concern" because it betrays an interest on the part of the speaker possessing the concern.

Other facts also support the contention that TWIA's "concerns" were in the personal interest of its staff, rather than its policy holders. First, by its own admission, TWIA acknowledged that relocation of its headquarters to the Gulf Coast would save the Association and, by extension, its policy holders approximately \$1 Million per year. Also discussed in email records is the potential for employee turnover due to a move to a coastal county. Such an issue brought to light could have implied resistance on the part of staff to want to move from Austin.

Despite any potential benefit to policy holders over and above the drawbacks, according to TWIA's records, its meetings on House Bill 769 exclusively surrounded this provision of the legislation. Following House engrossment, House Bill 769 as introduced in the Senate omitted this provision.

The purpose of Chapter 556.006 is to ensure that an agency officer or employee has no interest in the passage or defeat of any legislative measure. Here, there are facts that substantiate the notion that TWIA staff's resistance to a portion of legislation was conveyed to legislators in a way that defeated a part of the measure to the detriment of its policy holders. TWIA's interest as charged by the Legislature in its statute is to provide insurance of last resort to Coastal Texans and not



represent the views of its staff. In this context, it appears TWIA could have strayed beyond the provision of information when discussing concerns regarding the relocation of TWIA headquarters contemplated by HB 769 thus triggering a violation of 556.006(a) by failing to invoke its authorization for information.

Second, there is no evidence from TWIA's records that it received a request for public information from the Senate office staff it met with regarding House Bill 769.

The final inquiry in this request asks: **If TWIA is subject to Texas Government Code 556.006 and has violated the law with its legislative meetings, what consequences would it face, if any?**

Texas Government Code Section 556.008 reads, "A state agency may not use appropriated money to compensate a state officer or employee who violates Section 556.004(a), (b), or (c) or Section 556.005 or 556.006(a), or who is subject to termination under Section 556.007." For any state agency that receives appropriated money, the answer to this inquiry appears obvious: that agency would be barred from compensating an employee or officer in violation of Section 556.006. However, as mentioned above, TWIA does not receive a legislative appropriation. This poses a novel question for how 556.008 would be used to enforce 556.006 and other referenced sections of Chapter 556.

Binding caselaw is instructive to interpret the statute in light of a potential ambiguity affecting the operation of a statute. First, in deciphering statutory construction, the Supreme Court of Texas notes that the "primary objective is to give effect to the Legislature's intent."²⁶ Also, the Court must "rely on the plain meaning of the text as expressing legislative intent unless a different meaning is supplied by legislative definition or is apparent from the context, or the plain meaning leads to absurd results."²⁷ Here, as mentioned above, "appropriated money" is defined as "money appropriated by the legislature through the General Appropriations Act or other law."²⁸ In the case of TWIA, it collects premiums from policy holders and the funds become state funds once deposited in the Association's Catastrophe Reserve Trust Fund ("CRTF").²⁹ Based on the explicit identification of CRTF monies as "state funds" in Texas Insurance Code Section 2210.452(b) it seems clear that the Legislature intended premium payments collected by TWIA to be "appropriated" by law for a state purpose—namely paying

²⁶ *Texas Lottery Commn. v. First State Bank of DeQueen*, 325 S.W.3d 628, 635 (Tex. 2010) See also, *Galbraith Eng'g Consultants, Inc. v. Pochucha*, 290 S.W.3d 863, 867 (Tex.2009).

²⁷ *Id.* See also, *City of Rockwall v. Hughes*, 246 S.W.3d 621, 625–26 (Tex.2008).

²⁸ Tex. Gov't Code § 556.001 (1).

²⁹ Tex. Ins. Code § 2210.452.



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benefits to policy holders and administration of the Association. Furthermore, it appears here that no other statutory definition of “appropriated money” is apparent in Texas Insurance Code Chapter 2210 regarding TWIA’s operations or Texas Government Code Chapter 556 regarding certain prohibited acts by certain public entities and officials. It thus seems plausible that the monies TWIA receives collected under the portents of state law fall within the ambit of “appropriated funds” in Texas Government Code 556. If this is concluded then the answer to this inquiry achieves sharp relief: the employees of the Association who engaged in the violation of statute are unable to be compensated with Association funds.

These points of law and facts are critical to reaching your decision in this opinion request.

Thank you for considering this request.

Briscoe Cain
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House District 128

