



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

October 2, 1990

Mr. Dennis R. Jones, M.B.A., M.S.W.
Commissioner
Texas Department of Mental Health
and Mental Retardation
P. O. Box 12668
Austin, Texas 78711

LO-90-69

Dear Mr. Jones:

You ask about the Interagency Council on ICF-MR Facilities, which is created by article 5547-202, V.T.C.S. You explain that the initials "ICF-MR" stand for "Intermediate Care Facility - Mental Retardation," and that the designation comes from federal Medicaid provisions.

The council is composed of:

(1) one representative of the following agencies, appointed by the commissioner of the respective agency:

(A) Texas Department of Health;

(B) Texas Department of Human Services;
and;

(C) Texas Department of Mental Health and
Mental Retardation;

(2) one representative of a community
center, appointed by the governor;

(3) one representative of a private ICF-MR
provider, appointed by the governor; and

(4) two representatives of consumer groups
that have an interest in and knowledge of
issues relating to persons with mental
retardation or developmental disabilities,
with one appointed by the lieutenant governor

and the other appointed by the speaker of the house of representatives.

V.T.C.S. art. 5547-202, § 2.43(b).

Subsections (g) and (h) of section 2.43 of article 5547-202 set out the duties of the council. Subsection (g) provides:

The council shall conduct an annual review of the plan submitted by the department under Section 2.42 of this Act. Not later than August 30, the council shall review the plan, make changes the council considers necessary, and approve the final plan.

Subsection (h) provides:

The council shall review any amendments to a plan in operation submitted by the department not later than the 30th day after the date on which the department submits the amendment. If necessary, the council shall revise the plan not later than the 45th day after the date on which the department submits the amendment.

The plan referred to in those provisions is a plan for the development of new beds in the ICF-MR program. Id., § 2.42.

You ask about the combined effect of section 2.43 of article 5547-202 and section 6252-9b, a conflict-of-interest provision. Section 6(a) of article 6252-9b provides:

This section applies only to an elected or appointed officer who is a member of a board or commission having policy direction over a state agency [exclusion not applicable here]. If such an officer has a personal or private interest in any measure, proposal, or decision . . . he shall publicly disclose the fact to the board or commission in a meeting called are held in compliance with the Open Meetings Law . . . and shall not vote or otherwise participate in the decision. The disclosure shall be entered in the minutes of the meeting.

See generally Attorney General Opinion H-71 (1973).

You suggest that certain members of the council are required to have a private interest in the approval of the plan for the development of new beds in the ICF-MR program, the sole responsibility of the council. If those members must abstain from participating in and voting on matters regarding the plan, you say, their membership on the council would serve little purpose. Because we cannot make fact findings in the opinion process, we cannot determine whether article 6252-9b would, if applied to the council, require one or more members to abstain from participating in any matter before the council. It is the responsibility of the council, in the first instance, to determine what effect article 6252-9b would have on members of the council.

If it is in fact the case that article 6252-9b would effectively eliminate certain members from the council, we think that a court would find that the specific mandate of article 5547-202 that members of the council represent certain interests prevail over the more general provisions of article 6252-9b. See Gov't Code § 311.021 (there is a presumption that an entire statute is intended to be effective and that a reasonable result is intended); see also V.T.C.S., art. 5547-3 (Code Construction Act is applicable to Mental Health Code).

Yours very truly,



Sarah Woelk
Chief
Letter Opinion Section

SW/lcd

Ref.: RQ-2026
ID# 9679