



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 18, 1993

Ms. Cathy Bonner
Executive Director
Texas Department of Commerce
P.O. Box 12728
Austin, Texas 78711-2728

Letter Opinion No. 93-52

Re: Whether the term "business entity" in
Government Code, section 481.0042,
includes non-profit businesses (ID# 17502)

Dear Ms. Bonner:

You ask whether the term "business entity" in section 481.0042 of the Government Code includes non-profit businesses. The legislature added this section governing Texas Department of Commerce (the "department") conflicts of interest to chapter 481 of the Government Code in 1991. See Acts 1991, 72d Leg., 2d C.S., ch. 11, § 3, 1991 Vernon's Sess. Law Serv. 226, 227. Subsection (a) of section 481.0042 provides in part that a member of the department's policy board or the executive director or an employee of the department may not be an officer, employee, or paid consultant of, or directly own, control, or have any interest in, "a business entity" that contracts with the department. See Gov't Code § 481.0042(a)(1), (2). In addition, subsection (b) of that section provides that "[a]n officer, employee, or paid consultant of a business entity or trade association of business entities that contracts with the department may not be a member of the policy board or the executive director or employee of the department." See also Gov't Code § 481.0042(c) (applying same prohibition to spouses of foregoing individuals).

Chapter 481 does not define the term "business entity." Nor are we aware of any legislative history that would aid us in interpreting this term. As you point out, the term "business entity" is defined differently in various statutes. Article 6252-9b, V.T.C.S., for example, which also applies to state officers and employees and establishes reporting requirements and standards of conduct, defines the term "business entity" narrowly to include only for-profit businesses:

"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, trust, or any other entity recognized in law through which business for profit is conducted.

V.T.C.S. art. 6252-9b, § 2(11). On the other hand, the term "business entity" in chapter 171 of the Local Government Code, which regulates conflicts of interest of officers of local governments, includes non-profit businesses:

"Business entity" means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, or any other entity recognized by law.

Local Gov't Code § 171.001. In Attorney General Opinion JM-424 (1986), this office concluded that the term "any other entity recognized by law" in the predecessor statute to this provision was not limited to corporations incorporated under the Texas Business Corporation Act and did not exclude those incorporated under the Texas Non-Profit Corporation Act. Attorney General Opinion JM-424 (1986) at 2.

When construing a statute, we must give words their ordinary meaning. Gov't Code § 312.002(a). The term "business" generally suggests a for-profit enterprise. *See, e.g.,* BLACK'S LAW DICTIONARY 179 (5th ed. 1979) (defining "business" as "employment, occupation, profession, or commercial activity engaged in for gain or livelihood. Activity or enterprise for gain, benefit, advantage or livelihood"); WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY 190 (1983) (defining "business" as "a commercial or sometimes an industrial enterprise"). Given that the term "business" generally denotes a for-profit enterprise, we hesitate to conclude that the term "business entity" in section 481.0042 of the Government Code includes non-profit businesses. We are especially hesitant to do so when the legislature has specifically defined the term elsewhere broadly enough to include non-profit businesses, *see* Local Gov't Code § 171.001, but has not done so in the provision at issue, and when the use of the term in the other principal applicable conflict-of-interest provision, article 6252-9b, is specifically limited to for-profit enterprises. For these reasons, we conclude that the term "business entity" in section 481.0042 of the Government Code does not include non-profit businesses.

We also note that this conclusion is supported by subsection (d) of section 481.0042. As noted above, subsection (b) of that section provides that "[a]n officer, employee, or paid consultant of a business entity or trade association of business entities that contracts with the department may not be a member of the policy board or the executive director or employee of the department." *See also* Gov't Code § 481.0042(c) (applying same prohibition to spouses of foregoing individuals). Subsection (d) defines the term "trade association" to mean "a *non-profit*, cooperative, and voluntarily joined association of business or professional competitors designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest." (Emphasis added). If the term "business entity" included non-profit businesses, we believe that it would have been unnecessary for the legislature to have included the term "trade association" in addition to the term "business entity" in subsections (b) and (c).

S U M M A R Y

The term "business entity" in section 481.0042 of the Government Code does not include non-profit businesses.

Yours very truly,

A handwritten signature in cursive script that reads "Mary R. Crouter".

Mary R. Crouter
Assistant Attorney General
Opinion Committee