

Marvin J. Titzman
Executive Director



Board Members
M. F. (Red) Connor, Chairman
Emmett Allen, Vice-Chairman
F. Pete Adams
Phillip A. Aronoff, ex officio
Bob Caskey
Robert A. Lansford
Pat Legan
Trevor David Rees-Jones
Mrs. Russell (Molly) Pryor
Herman H. Wommack, Jr.

TEXAS SURPLUS PROPERTY AGENCY

ADMINISTRATIVE OFFICE
P. O. Box 8120
SAN ANTONIO, TEXAS 78208-0120
2103 ACKERMAN ROAD -- TELEPHONE (512) 661-2381
FAX (512) 662-8316
June 17, 1991

12790
ms

BQ-182

The Honorable Dan Morales
Attorney General
P.O. Box 12548
Austin, Tx. 78711-2548

RECEIVED
JUN 20 91
Opinion Committee

Re: Opinion Request

Dear Mr. Attorney General:

The Texas Surplus Property Agency is a state agency created by the Texas Legislature, Article 6252.6b, V.A.C.S. The Agency's primary function is to acquire, warehouse and distribute surplus federal personal property to entities and institutions which qualify under the Federal Property and Administrative Services Act of 1949. 40 U.S.C. 484(j), as amended. Through the administration of this federal grant-in-aid program, the agency generates its operating funds through the acquisition and redistribution of federal surplus personal property. These funds are maintained in the trust fund created by Article 6252-6b, V.A.C.S. The Texas Surplus Property Agency is included in the General Appropriations Act by the Texas Legislature, however, the appropriation does not include any General Revenue funds. All funds are maintained in the State Treasury.

The question has arisen concerning the applicability of Senate Bill #222, Section 84, 71st Legislature Regular Session (General Appropriations Act for 1990-1991 Biennium) to those individuals which have submitted Financial Disclosure Statements pursuant to Article 6252.9b V.A.C.S.

The provisions of each of these statutes appear to be duplicative in that both require detailed financial disclosures to be submitted on an annual basis and be open to public inspection. It is respectfully requested that your office review each of these statutes, review the circumstances and issue a formal opinion to answer the following questions.

ACCOMPANIED BY ENCLOSURES —
An Equal Opportunity Employer
FILED SEPARATELY

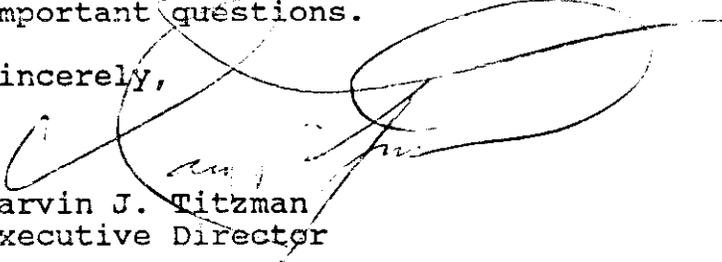
June 17, 1991
Page 2

1.) Would failure to submit the financial disclosure statement required by Senate Bill #222, Section 84, 71st Legislature Regular Session (General Appropriations Act for 1990-1991 Biennium) constitute a violation of that statute if the provisions of Article 6252.6b V.A.C.S. have been met.

2.) Would failure to submit the financial disclosure statement required by Article 6252.6b V.A.C.S. constitute a violation of that statute if the provisions of Senate Bill #222, Section 84, 71st Legislature Regular Session (General Appropriations Act for 1990-1991 Biennium) have been met.

This agency looks forward to your prompt response to these important questions.

Sincerely,



Marvin J. Titzman
Executive Director

MJT:ld

Handwritten notes at the top of the page, including "7/14/89" and other illegible scribbles.

any funds shall, lignite or other...
by or institution for lease as...
shall use, to the...
ed by the institution...
institution or...
boards for lease...
taking in kind of...
clude a provision for...
monitoring the amount

funds appropriated by...
to charitable...
ary.

is appropriated in...
for which funds...
to perform...
Federal Relation...
State-Federal...
agencies.

appropriated funds...
preservation and...
building, their...
the State...
perform such

ally provided that...
the state...
ing debts and...
then sixty days after...
collection efforts...
ing procedure for...
and judgments to the

BITED. None of the...
nary, travel or...
resentation of...
work except that...
y leave, or leave...
gency of

s appropriated to...
ns shall be...
gements do not...
by the Health and

State agencies contracting directly with private residential care providers shall use a standard application form and shall require each contractor to submit cost reports according to procedures specified by the Council. State agencies providing funds with which local units of government purchase residential services for children shall encourage use of the standard application form and cost report.

Sec. 82. COLLECTION OF FUNDS FOR INSTITUTIONAL CLIENTS. It is the intent of the Legislature that all state agencies serving clients in institutions shall make every effort to collect funds from all available sources, including, but not limited to, hospitalization coverage and child support.

Sec. 83. RETENTION OF MINERAL RIGHTS. No state lands shall be sold unless the mineral rights are retained by the state, unless impractical.

Sec. 84. FINANCIAL DISCLOSURE STATEMENTS. None of the funds appropriated to departments and agencies covered in Articles I through IV shall be contractually obligated unless those employees who are responsible for entering into such contracts and for approving such expenditures have completed financial disclosure statements and these financial statements have been reviewed and approved by the board or commission to which each employee is responsible. All financial statements shall be on file in the administrative offices of the respective department or agency, shall be submitted to the responsible board or commission for approval annually, and shall be open to public inspection.

Sec. 85. ACCESS TO STATE LANDS. The state shall require egress and ingress on all state lands when any state lands are sold, providing additional state lands in the immediate area an easement to a public thoroughfare.

No state funds shall be expended with any person, corporation or business entity for any purpose not presently specifically authorized by statute where that person, corporation or business entity denies the state access by easement to landlocked state properties. State funds shall be construed as any tax funds, bond monies guaranteed by the state or any other funds flowing to or through any state agency, board, commission, entity or authority and specifically includes river authorities.

Sec. 86. APPROPRIATION OF COLLECTIONS FOR SEMINARS AND CONFERENCES. All funds collected for the reimbursement of costs associated with the conducting of seminars, conferences or clinics which directly relate to the legal responsibilities and duties of the agency and which are for the purposes of education, training, or informing employees or the general public are hereby appropriated for the necessary expenses incurred in conducting the seminar. Provided, however, all applicable laws, and rules and regulations for the acquisition of goods and services for the state shall apply to such expenditures. Any remaining balances from such collections as of August 31, 1989 are hereby reappropriated for the same purpose for the biennium beginning September 1, 1989.

Sec. 87. MAXIMIZATION OF INDIRECT COST REIMBURSEMENTS. It is the intent of the Legislature that all state agencies and institutions participating in federally funded or other programs where indirect cost reimbursements are an allowable part of charges to the program, establish procedures to maximize the recovery of such costs.

(iii) "Order" means the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing.

(iv) "Adjudication" means agency process for the formulation of an order.

(v) "License" includes the whole or a part of an agency permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission.

(vi) "Licensing" includes agency process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license.

(11) "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.

(12) An individual has a "substantial interest" in a business entity if he:

(A) has controlling interest in the business entity;

(B) has ownership in excess of 10 percent of the voting interest in the business entity or in excess of \$25,000 of the fair market value of the business entity;

(C) has any participating interest, either direct or indirect, by shares, stock, or otherwise, whether or not voting rights are included, in the profits, proceeds, or capital gains of the business entity in excess of 10 percent of them;

(D) holds the position of a member of the board of directors or other governing board of the business entity;

(E) serves as an elected officer of the business entity;

(F) is an employee of the business entity.

(13) "Person" means an individual or a business entity.

(14) a person's natural child, adopted child, or stepchild is his "dependent child" during a calendar year if the person provides over 50 percent of the child's support during the year.

Financial statement to be filed

Sec. 3. (a) On or before the last Friday in April of each year, every elected officer, salaried appointed officer, appointed officer of a major state agency, and executive head of a state agency shall file with the secretary of state a financial statement complying with the requirements of Section 4 of this Act.

(b) In the case of appointments of salaried appointed officers, appointments to fill vacancies in elective offices, and appointed officers of major state agencies on and after the effective date of this Act, each appointee shall file the financial statement within 30 days after the date of his appointment or the date he qualifies for the office, or if confirmation by the senate is required, before his confirmation, whichever is earlier.

(c) Whenever a person is appointed or employed as the executive head of a state agency on or after the effective date of this Act, he shall file the financial statement within 45 days after the date he assumes the duties of the position. Each state agency shall immediately notify the secretary of state of the appointment or employment of an executive head of the agency.

(d) Within 40 days after the date of the regular filing deadline for an application for a place on the ballot in the general primary election, every person who is a candidate for an office as an elected officer, whether partisan or independent, shall file the financial statement. When the deadline under which a candidate files an application for a place on the ballot is later than the regular filing deadline for an independent candidate, or when the declaration of candidacy form is filed before the date of the regular filing deadline,

(e) Except as otherwise provided in this Act, at least 30 days before the deadline for the filing of a financial statement by each individual required to file, the secretary shall mail to the individual two copies of the financial statement form. In state shall mail to the individual two copies of the financial statement form. In the case of candidates other than those covered by Subsection (f) of this section, the forms mailed within 15 days after the filing deadline date. In the case of appointed and salaried appointed officers, appointments to fill vacancies in elective offices, and ed officers of major state agencies, the forms shall be mailed within seven days date of the appointment, or if the legislature is in session, sooner if possible.

(f) Any person nominated to fill a vacancy in a nomination as a candidate for an elected officer as provided in Section 233, Texas Election Code, as amended 13.56, Vernon's Texas Election Code), must file the financial statement within after the date on which the certificate of nomination required by Subsection (Section 233, Texas Election Code, as amended (Article 13.56, Vernon's Texas Code), is filed. The secretary of state shall send copies of the financial statement the nominee within five days after the date the certificate of nomination (g) If a person has filed a financial statement as required by one subsection covering the preceding calendar year, he is not required to file a statement as required by another subsection if before the deadline for filing other subsection he notifies the secretary of state in writing that he has already financial statement under the subsection specified.

(h) A person required to file a financial statement under Subsection (a) of this may request the secretary of state to grant an extension of time of not more than 60 days if the request is received prior to the filing deadline or if a timely filing for extension is prevented because of physical or mental incapacity. Not more extension may be given to a person in one year except for good cause shown.

(i) The deadline for filing any statement required by this section is 5 p.m. of the last day of filing falls on a Saturday or Sunday or an official state holiday in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline is extended to 5 p.m. of the next day which is not a Saturday or Sunday or holiday. Any statement required by any provision of this section to be filed specified time period shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The post receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. filing the statement may show by competent evidence that the actual date of filing is to the contrary.

Content of financial statement

Sec. 4. (a) The financial statement required herein shall include the accounting financial activity of the person required to file the statement by this Act and the activity of his spouse and dependent children over which he had actual control preceding calendar year as hereinafter provided.

(b) Where an amount is required to be reported by category, the person statement shall report whether the amount is (1) less than \$1,000, (2) at least less than \$5,000, or (3) \$5,000 or more. An amount of stock shall be reported of number of shares instead of by category of dollar value. Where an amount required to be reported by category, it shall be reported whether the amount is (1) less than 100 shares, (2) at least 100 but less than 500 shares, or (3) 500 shares or more. Where a description of real property is required to be reported, it shall be