

Texas 
Department
of
Human Services

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MJ

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September 19, 1991

RQ-198

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SEP 24 91

Opinion Committee

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

Dear General Morales:

The Texas Department of Human Services (hereafter, the department) is authorized by law to create contractual obligations against the State in the administration of Federal welfare programs, Tex.Hum.Res.Code, Sec. 22.002(e)-(g); Attorney General Opinion No. J.M.-978 (November 10, 1988), pg. 3. The Texas Board of Human Services appoints a Commissioner who is authorized by law to exercise all rights and powers conferred on the department. Tex.Hum.Res.Code, Sec. 21.004. Therefore, the department's Commissioner is authorized by law to enter into contracts on behalf of the State. The General Appropriations Act for fiscal years 1992-1993 (H.B. 1, Second Called Session), in article V, §79, imposes the following condition on the exercise of such authority by the department's Commissioner:

"Sec. 79. 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." (emphasis supplied)

The Honorable Dan Morales
September 19, 1991
Page 2

This rider would appear to both track and extend the ethics mandates of Tex. Rev. Civ. Stat. art. 6252-9b which, in §3, also calls on certain state officials and employees to file financial disclosure statements.

The purpose of this letter is to request your opinion as to whether Sec. 79 (supra) can constitutionally modify existing general law requiring the executive heads of state to file a financial statement with the Secretary of State. Specifically, we are asking if §79 may impose a requirement not found in article 6252-9b on those individuals required to file financial statements, i.e., that these statements be reviewed and approved by the board or commission to which these employees are responsible.

In 1985 the Comptroller asked for advice with regard to the same rider, which at that time was §86 of article V of the General Appropriations Act for the 1985-87 biennium. At issue was the question of which individuals were required to file financial statement. In Attorney General Opinion JM-343 your office indicated that:

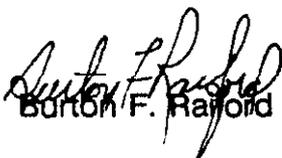
"...the legislature intended the rider in question to implement the general law of article 6252-9b. Any broader construction would cast serious doubt on the constitutionality of section 86."

Thus, the rider was interpreted narrowly to apply only to those individuals designated in article 6252-9b. It did, however, repeat the language of the rider that called for the affected individual to submit the statement to the board of his or her agency.

We specifically ask if the requirement set forth in the rider that calls on individuals to submit their financial statement to their board or commission for approval is not also an impermissible attempt to add a new requirement to the standards set forth in article 6252-9b.

As always, we appreciate your consideration.

Sincerely,


Burton F. Rayford

BFR:jbm