



# Texas Department of Insurance

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RQ-226

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The Honorable Dan Morales  
Attorney General  
Executive Office Building  
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Austin, TX 78701

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**OCT 07 91**  
**Opinion Committee**

Attention: Opinions Committee

Dear General Morales:

The Texas Department of Insurance requests your assistance in interpreting a new provision of the Texas Insurance Code added by the Legislature as article 1.06D of House Bill 2, 72nd Legislature, Regular Session, 1991 ("H.B.2"). Numerous inquiries have arisen regarding the interpretation of this provision. The department requests clarification of article 1.06D and, in particular, a response to the following questions:

1. Does a person "represent" a client before the three-member State Board of Insurance only if the person appears before the Board when it meets as a body in formal session?
2. Does client representation under article 1.06D include contacts with individual board members with respect to public business?
3. Does the registration provision of article 1.06D apply to a person who serves as a member of an advisory committee appointed by the Board when conducting committee business?
4. Does a person "represent" a client before the board under article 1.06D if the person contacts Texas Department of Insurance staff on behalf of a client?
5. Do any of the following activities on behalf of a client, fall within the registration requirement of Article 1.06D?
  - a. responding to a Texas Department of Insurance inquiry or request for information;
  - b. responding to a Texas Department of Insurance complaint investigation; or

c. requesting general information or rule interpretation from the Texas Department of Insurance.

6. Must a person who represents himself or who represents a full-time, exclusive employer and not the industry at large (e.g., a company manager) register in accordance with Article 1.06D in transacting routine business before the board?

7. Do any of the exceptions to registration specified in Chapter 305 of the Government Code apply to registration pursuant to article 1.06D, TEX. INS. CODE?

Article 1.06D provides as follows:

REGISTRATION OF PERSONS REPRESENTING CLIENTS BEFORE BOARD. A person must register with the secretary of state in the manner provided by Chapter 305, Government Code, if the person represents a client before the board, or any board, committee or other body appointed by the board, more than twice during any calendar year.

It is the belief of the Texas Department of Insurance that article 1.06D was intended to apply to appearance by persons before the three-member board and committees or bodies appointed by the three-member board, and not to contacts with members of the agency staff or individual members of committees appointed by the Board or individual board members. The Legislature in article 1.01A of H.B. 2 defined the Board to be the three-member Board. This article also provides that the department or agency as a whole is "composed of the board, the Commissioner, and other officers and employees required to efficiently implement the purpose of this code, other insurance laws of this state, and other laws providing jurisdiction in or applicable to the department, board, or Commissioner". Since the Legislature specifically defined the term "Board" to be the three-member board of the Texas Department of Insurance and has used the same term regarding registration in article 1.06D, statutory construction would clearly indicate that the Legislature meant the three-member Board and not the staff of the agency. Brookshire v. Houston Independent School Dist. 508 S.W. 2d 675 (Tex. Civ. App.- Houston 1974, no writ).

It is the department's position that the Legislature intended a just and reasonable result, capable of execution. "[I]t is to be presumed that in enacting legislation the Legislature intended a just and reasonable result and a result feasible of execution is intended...we are obliged, in its construction, to consider among other things the object sought to be obtained and the consequences of any particular construction." Cole v. Texas Emp. Commission 563 S.W. 2d 363 (Tex. Civ. App. - Ft. Worth 1978, error dismd). It would be extremely difficult, if not impossible, to enforce a provision which required a person to be registered under Chapter

305, Government Code, if the person represented a client more than twice during a calendar year before the staff of the agency rather than the Board, or a committee or body appointed by the Board. It is entirely likely that a staff member would have no knowledge of other contacts that a person may have had with other staff members in representation of a client. A staff member would not know whether the person has complied with the registration requirements of Chapter 305. Requiring persons who represent a client more than twice during a calendar year by meeting with staff members to comply with registration requirements would render the provision unenforceable and does not appear to address the concerns of the Legislature, regarding registration of lobbyists before the Board.

Senate Bill 1, adopted by the 72nd Legislature, Regular Session, 1991, pertains to the ethics of public servants, creates the Texas Ethics Commission, and relates to the registration, reporting, and restrictions concerning expenditures made to influence legislation or administrative action, among other matters. The primary regulatory provision pertaining to registration of lobbyists is section 305.003, Government Code, as amended in S.B. 1. It is clear that Chapter 305 of the Government Code applies to all agencies, and the newly created Texas Ethics Commission will be responsible for enforcement of this chapter, in addition to other functions.

Section 2.03 of S.B. 1 amends Section 305.003 of the Government Code and addresses the persons required to register as follows:

Sec. 305.003. PERSONS REQUIRED TO REGISTER. (a) A person must register with the commission under this chapter if the person:

(1) makes a total expenditure of an amount determined by commission rule but not less than \$200 in a calendar quarter, not including the person's own travel, food, or lodging expenses or the person's own membership dues, on activities described in Section 305.006(b) to communicate directly with one or more members of the legislative or executive branch to influence legislation or administrative action; or

(2) receives compensation or reimbursement, not including reimbursement for the person's own travel, food, or lodging expenses or the person's own membership dues, of more than an amount determined by commission rule but not less than \$200 in a calendar quarter from another person to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action.

(b) Subsection (a)(2) requires a person to register if the person, as part of his regular employment, has communicated directly with a member of the legislative or executive branch to influence legislation or administrative action on behalf of the person by whom he is compensated or

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reimbursed, whether or not the person receives any compensation for the communication in addition to the salary for that regular employment. However, Subsection (a)(2) does not require a member of the judicial, legislative, or executive branch of state government or an officer or employee of a political subdivision of the state to register.

(c) A person who communicates directly with a member of the executive branch to influence administrative action is not required to register under Subsection (a)(2) if the person is an attorney of record or pro se, the person enters his appearance in a public record through pleadings or other written documents in a docketed case pending before a state agency, and that communication is the only activity that would otherwise require the person to register.

Section 2.04 of S.B. 1 sets forth the exceptions to the required registration. There are seven exceptions to the registration requirements and they include: the media, including letters to the editor; a person whose direct communication is an appearance before or testimony in a hearing and who does not receive special or extra compensation for the appearance other than actual expenses; a person whose only activity is to encourage or solicit members, employees, or stockholders of an entity to communicate directly with members of the legislative or executive branch to influence legislation or administrative action; a person whose only activity is to compensate or reimburse an individual registrant to act in the person's behalf; a person who attends a meeting or entertainment event attended by a member of the legislative or executive branch if the total cost of attending the event is paid by a business entity, union, or association; a person whose only compensation subject to Section 305.003(a)(2) is reimbursement for lost wages due to attending a meeting or entertainment event, travel to and from the event, admission for the event, and food and beverage consumed at the meeting event if the event is attended by a member of the legislative or executive branch and if the total cost of the meeting or entertainment event is paid by a business entity, union, or association; and a person whose expenditures and compensation, as described in Section 305.003, combined do not exceed \$5,000 in a calendar year.

It is clear under Chapter 305 that an attorney representing a client before an agency is not required to register as a lobbyist under the Government Code. Does article 1.06D require registration of that same attorney if in representing a client, he/she appears more than twice during the calendar year before the State Board of Insurance or a Board appointed committee?

The department recognizes the need to regulate lobbyists by requiring public disclosure and identification of the activities, expenditures, and identity of those "persons who, by direct communication with government officers, engage in efforts to

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persuade members of the legislative or executive branch to take specific actions" §305.001, Gov. Code. It is the department's understanding of this chapter that persons who do not meet one of the stated exceptions to registration in Chapter 305 would be required to register with the Ethics Commission under Chapter 305, if their actions require registration under §305.003, Gov. Code. Do those same exceptions apply to Article 1.06D?

Since H.B. 2 is effective September 1, 1991, the department wants to ensure that it is properly interpreting article 1.06D as it may apply to representatives before the Board. We would appreciate your opinion on the questions previously presented.

Please contact Russell R. Oliver, Associate Commissioner of Legal Services, 475-1983, if you need additional information. Thank you for your assistance in this matter.

Sincerely,



Philip W. Barnes  
Commissioner of Insurance

PWB/LZ/kv

cc: Claire Koriath, Chair  
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Services