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STATE SENATOR

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OPINION COMMITTEE

RQ-0444-JC

October 3, 2001

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

FILE # ML-42211-01  
I.D. # 42211

RE: Request for Attorney General Opinion's Opinion Regarding Possible Conflict of Interest Issues for Members of the Texas Council of Environmental Technology.

Dear General Cornyn:

In 2001, the 77th Texas Legislature adopted Senate Bill 5 which codified the creation of the Texas Council on Environmental Technology (TCET) with the addition of Chapter 387 to the Texas Health and Safety Code. Sec. 1(b), Chapter 967, Acts 77th Leg., R. S., 2001. The TCET was formed to increase the development and use of new technology in addressing the environmental issues currently confronting the state of Texas. Specifically, the TCET was given the mission of accomplishing several goals including: identifying and evaluating new technologies; coordinating the research of such environmental technology at Texas' state universities; seeking the approval of the United States Environmental Protection Agency (EPA) for and facilitating the deployment of those technologies; and assisting the Texas Natural Resource Conservation Commission (TNRCC) and the EPA in the process of ensuring credits to Texas' State Implementation Plan for new, innovative, and creative technological advancements.

S.B. 5 established that the membership of the TCET consists of eleven leading academic researchers, scientists, and experts in the fields of air and water quality who are employed at state universities in Texas. The TCET and its members will serve as the State of Texas' clearinghouse for state university-conducted research. Tex. Health & Safety Code Ann. § 387.002(a) (Vernon 1992). In addition, during the recent 77th Legislative Session, Senate Bill 1 appropriated \$11 million to the TCET for the purpose of providing funding for research grants to be awarded by the TCET.

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There are several governmental entities that have been created by Texas statute that have similar organizational structures to the TCET that allow members to participate in the grant or contract award procedure. These entities include: the Telecommunications Infrastructure Fund Board, (Tex. Util. Code Ann § 57.044-.047 (Vernon 1998)); the Texas-Israel Exchange Fund Board, (Tex. Agric. Code Ann. § 45.006-.008 (Vernon 1982)); the Texas Food and Fibers Commission, (Tex. Agric. Code Ann § 42.001-42.011 (Vernon 1982)); and the Fire Ant Research and Management Account Advisory Committee, (Tex. Educ. Code Ann § 88.215 (Vernon 1987 & Supp. 1992)).

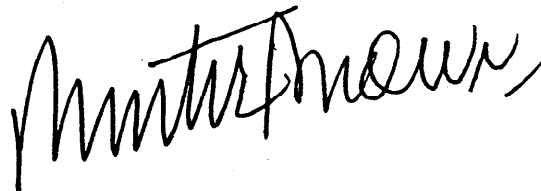
A problem could arise in that there is a likelihood that members of TCET will want to compete for grants awarded by TCET and would themselves be the Principal Investigator (PI) on such grant proposals.

Based on the foregoing, I respectfully submit the following questions for your opinion:

- 1. Is it a conflict of interest for members of the Texas Council on Environmental Technology (TCET) to apply for and be awarded grants, either individually or on behalf of a university, by the TCET?**
- 2. If a conflict of interest does exist, can the conflict be resolved, either by the member recusing himself from the vote on the award of that grant, or by some other means?**

Your prompt attention to this issue would be greatly appreciated. Please do not hesitate to contact me should you require additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "JEB:te", written in a cursive style.

JEB:te