



TEXAS DEPARTMENT OF INFORMATION RESOURCES

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OPINION COMMITTEE

FILE # M2-45660-08
I.D. # 45660

BRIAN S. RAWSON
Chief Technology Officer
State of Texas

— ♦ —
DIR BOARD OF
DIRECTORS

— ♦ —
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Ex Officio

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Ex Officio

EDWARD SERNA
Ex Officio

CERTIFIED MAIL, RETURN RECEIPT REQUESTED

The Honorable Greg Abbott
Attorney General of Texas
Office of the Attorney General
209 West 14th Street, Suite 800
Austin, Texas 78701

RQ-0706-GA

RE: Request of the Texas Department of Information Resources for an Attorney General's Opinion concerning §2054.022(a)(7), Government Code

Dear General Abbott:

Pursuant to §402.042, Government Code, this letter respectfully requests the opinion of the Office of the Attorney General on a matter concerning my official duties. The request is made because I cannot fairly interpret and apply the meaning of §2054.022(a)(7), Government Code due to its broad, vague and ambiguous wording.

If I know a potential ground exists for the removal of a Texas Department of Information Resources (DIR) board member from the DIR board under §2054.025, Government Code, I am required to notify the presiding officer of the DIR board pursuant to §2054.025(c), Government Code. That requirement, coupled with the necessity that DIR board members be able to understand the prohibitions of §2054.022, Government Code, and meet their statutory obligations, prompt me to request this opinion.

Section 2054.022(a), Government Code, which is applicable only to members of the DIR board and the executive director, provides:

"§ 2054.022. CONFLICT OF INTEREST. (a) A member of the board or the executive director may not:

(1) be a person required to register as a lobbyist under Chapter 305 because of the person's activities for compensation on behalf of a business entity that has, or on behalf of a trade association of business entities that have, a substantial interest in the information resources technologies industry;

(2) be an officer, employee, or paid consultant of a

business entity that has, or of a trade association of business entities that have, a substantial interest in the information resources technologies industry and that may contract with state government;

(3) own, control, or have, directly or indirectly, more than a 10 percent interest in a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(4) receive more than 25 percent of the individual's income from a business entity that has a substantial interest in the information resources technologies industry and that may contract with state government;

(5) be interested in or connected with a contract or bid for furnishing a state agency with information resources technologies;

(6) be employed by a state agency as a consultant on information resources technologies; or

(7) accept or receive money or another thing of value from an individual, firm, or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift, or otherwise."

(emphasis added in subsections (a)(1-7) above)

When read in the context of the other subsections of §2054.022, Government Code, subsection (a)(7) is so broad, vague and ambiguous that DIR board members cannot determine what actions the legislature intended to constitute conflicts of interest. Subsections (a)(1-6) provide little guidance on the intent of subsection (a)(7). While different terms are used in subsections (a)(1-6), each of those subsections refers specifically to the information resources technologies industry.

Subsection (a)(7) prohibits a DIR board member from accepting or receiving money or another thing of value from an individual, firm or corporation to whom a contract may be awarded, directly or indirectly, by rebate, gift or otherwise. It is evident to me that it is likely DIR board members will enter into contracts in both their professional and personal lives during their board terms.

Therefore, I respectfully request and would appreciate your opinion as to the application and breadth of the use of the term "contract" in subsection (a)(7). Does the word "contract" refer only to information resources technologies contracts? Does it include any contract, even one the DIR board member enters into in his or her personal or professional life? As examples, does subsection (a)(7) preclude a DIR board member from receiving payment for real estate his or her business contracts to sell to a third party if the third party has a contract with a state agency? Does it preclude a DIR board

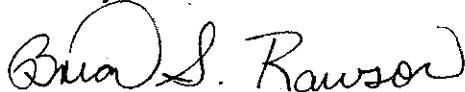
member from contracting with a financial institution that has a contract with a state agency for a personal or business loan and receiving the loaned funds? Does it preclude a DIR board member from having a contract with a non-information resources technology business entity if that business entity has contracts with state agencies other than DIR?

I will also appreciate your opinion of the meaning of "to whom a contract may be awarded." Does it refer to contracts that are actually awarded? If "may" is interpreted literally, isn't there always a prohibited conflict of interest, and how does one determine the universe of contracts that may be entered into? Finally, I request your opinion as to the enforceability of §2054.022(a)(7), Government Code, if your opinion is that the subsection is overly broad, vague or ambiguous.

Your opinion on the questions raised herein is of the utmost importance to our board members. DIR board members serve without compensation at the request of the Governor. As "volunteer" public servants, as a matter of fundamental fairness and respect, they should be able to know and understand the restrictions that may be placed on their personal and professional lives by §2054.022(a)(7), Government Code. Given the broad, vague and ambiguous wording of subsection 2054.022 (a)(7), I feel obliged to seek your opinion on this matter.

If additional information is needed to issue an opinion, please contact DIR's general counsel, Renée Mauzy, at (512) 475-4750 or renee.mauzy@dir.state.tx.us. Thank you for your opinion concerning the meaning of §2054.022(a)(7), Government Code.

Sincerely,



Brian S. Rawson
Executive Director

C: DIR Board Chairman and Members
Office of the Governor
Renée Mauzy