



City of San Antonio, Texas

Ethics Advisory Opinion No. 2008-09

October 23, 2008

Issued By: City Attorney's Office

I. Issues:

1. Is a member of a city advisory board a “city official” for purposes of the Ethics Code?
2. May a member of an advisory board appear before that board on behalf of his employer or other outside organization with which he is associated to present an application for a city grant program?
3. May a member of an advisory board speak for this outside organization, participate in the question and answer portion of the advisory board meetings, or speak to other individual advisory board members in settings other than advisory board meetings?

II. Inquiry

A member of a city advisory board is also a director with an outside organization that, from time to time, seeks city funding through grant applications. The member first asks whether he is a city official subject to the provisions of the city’s Ethics Code. Next, he asks whether he may represent the outside organization before the advisory board, and whether he may speak with other board members either at board meetings or elsewhere about the outside organization’s application.

III. The Ethics Code

A. Members of Advisory Boards are “City Officials” Subject to the Ethics Code

The Ethics Code provides a standard of conduct for all city officials and employees. Section 2-42(u) lists the individuals who are “city officials:”

Members of all boards, commissions (except the Youth Commission whose members are minors), committees, and other bodies created by the City Council pursuant to federal or state law or City ordinance, including entities that may be advisory only in nature, who are appointed by City Council or who are designated in the by-laws or organization papers of the entity to serve on behalf of the city; and board members of any entity who are appointed by the City Council to such board membership.

The advisory board that is the subject of this inquiry was created by ordinance approved by the City Council and its members are appointed by City Council. Accordingly, the members of this board are city officials subject to the provisions of the city’s Ethics Code.

B. A Member of a City Advisory Board Cannot Represent an Outside Organization Before the Board

A board member cannot represent a private interest before the board on which he or she serves. Section 2-47 of the Ethics Code states:

SECTION 2-47 REPRESENTATION OF PRIVATE INTERESTS

- (a) **Representation Before the City by a Member of the Board.** A city official or employee who is a member of a board or other city body shall not represent any person, group, or entity:

- (1) before that board or body;
- (2) before city staff having responsibility for making recommendations to, or taking any action on behalf of, that board or body, unless the board or body is only advisory in nature; or
- (3) before a board or other city body which has appellate jurisdiction over the board or body of which the city official or employee is a member, if any issue relates to the official's or employee's official duties.

The outside organization is not prohibited from seeking action before the board, but the advisory board member could not represent its interests as a representative of the outside organization. Contacting the other members individually for the purpose of advocating for the outside organization would also violate this provision.

However, because the board is advisory only in nature, the board member could contact and speak with city staff.

C. Conflict of Interest Provision Requires Board Member to Recuse Himself from Matters that May Affect the Financial Interests of the Outside Organization

Section 2-43(a)(8) of the Ethics Code provides:

SECTION 2-43 CONFLICTS OF INTEREST

(a) **General Rule.** To avoid the appearance and risk of impropriety, a city official or employee shall not take any official action that he or she knows is likely to affect the economic interests of:

- (8) a business entity or nonprofit entity for which the city official or employee serves as an officer or director or in any other policy making position; or

Because the board member serves as the director of the outside organization, he would have a conflict of interest in his capacity a member of the advisory board in any matter that could affect that organization's financial interests. He would be required to recuse himself from these matters.

Section 2-43(b) states:

(b) **Recusal and Disclosure.** A city official or employee whose conduct would otherwise violate Subsection (a) must recuse himself or herself. From the time that the conflict is, or should have been recognized, he or she shall:

- (1) immediately refrain from further participation in the matter, including discussions with any persons likely to consider the matter; and
- (2) promptly file with the City Clerk the appropriate form for disclosing the nature and extent of the prohibited conduct.

Accordingly, the member could not vote, nor could he participate in any discussion with anyone likely to consider the matter. The recusal and disclosure must be submitted to the Office of the City Clerk.

IV. Conclusion

An outside organization may seek city contracts even if one of its officers or directors serves on one of the city's advisory boards. A member of an advisory board who serves in a policy-making position for the outside organization, however, may not represent the interests of the outside entity before the board. The member would also have a conflict of interest in any matter that could affect that organization's financial interests, and would be required to recuse himself from any discussion or vote.