



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN, TEXAS 78711

**RAWFORD C. MARTIN
ATTORNEY GENERAL**

November 2, 1972

Hon. Bill McCoy
County Attorney
Ector County
Odessa, Texas 79760

Opinion No. M- 1259

Re: Does a conflict of interest exist for an Ector County Commissioner when his private accounting firm is hired by the 17-county Permian Basin Regional Planning Commission of which his county is a member?

Dear Mr. McCoy:

You request our opinion as to the possibilities of violations of the Commissioner's oath under Article 2340, Vernon's Civil Statutes, due to an alleged conflict of interest resulting from the hiring of a firm in which an Ector County commissioner has an interest by the Permian Basin Regional Planning Commission.

The facts as outlined in your request are:

Ector County is a member of Permian Basin Regional Planning Commission, organized pursuant to Article 1011m, Vernon's Civil Statutes. The governing body of the Planning Commission is made up of the county judges of the member counties. Yearly membership dues are paid by Ector County as well as all other governmental members, which funds, along with matching state and federal funds constitute the annual operating budget of the Planning Commission. Subsequent to the vote of the commissioner in question, along with all other members of Ector County Commissioners Court, for entry into the Planning Commission and the appointment by the court of the County Judge to the governing body, the Planning Commission hired a private accounting firm, in which the Ector County Commissioner has an interest, to perform some work for the Planning Commission.

Article 2340 provides for not only the official oath of office for county commissioners, but also a written oath concerning potential conflicts of interest with his public responsibilities as follows:

" . . . each Commissioner shall take the official oath, and shall also take a written oath that he will not be directly or indirectly

interested in any contract with, or claim against, the county in which he resides, except such warrants as may issue to him as fees of office. Each Commissioner shall execute a bond to be approved by the County Judge in the sum of three thousand dollars, payable to the County Treasurer, conditioned for the faithful performance of the duties of his office, that he will pay over to his county all moneys illegally paid to him out of county funds, as voluntary payments or otherwise, and that he will not vote or give his consent to pay out county funds except for lawful purposes."

From the facts and comments in your letter, we hold that no conflict with this Article exists in this situation. The contract of employment in which this Commissioner has an interest is not with the county and any potential claim would necessarily be against the Planning Commission and not the county. It is presumed that no member county retains any regulatory or veto power on the use of that county's membership dues paid into the Planning Commission's operating fund save the vote of the county judge on the Commission's governing body.

All public officers or employees, including county commissioners, are subject to the code of ethics as codified in Article 6252-9 of Veron's Civil Statutes. The public policy as contained in Section 1 of said Code is:

"It is hereby declared to be the policy of the Legislature of the State of Texas that no Member of the Legislature, legislative employee, elected State official, appointed State official, employee of a State agency, or any person who has an office of honor or trust in the State of Texas or any of its political subdivisions shall have any interest, financially or otherwise, directly or beneficially, or engage in any business transaction or professional activity or incur any obligation of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. . . ."

It is the very purpose of this ethics code, as well as others, to avoid any possibility of conflicting interests, duties, pecuniary interests or conflicts with the public interest and so makes it the public policy of the State.

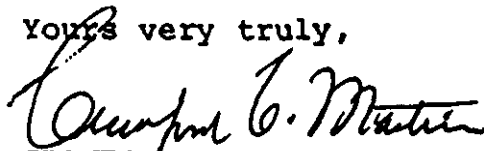
From the facts given (i.e. the commissioner is not required to take a position contrary to the interests of the county), it is our opinion that no actual or potential conflicts are presented by the employment of the commissioner's accounting firm by the Permian Basin Regional Planning Commission which could be construed as a violation of the provisions or policies of Article 6252-9 or public policy.

S U M M A R Y

The Commissioner in question has not violated his oath as contained in Article 2340, V.C.S., by the employment of his accounting firm by the Commission.

The hiring of the private accounting firm of this commissioner by the Permian Basin Regional Planning Commission presents no conflict of interest under Article 6252-9, V.C.S.

Yours very truly,



CRAWFORD C. MARTIN
Attorney General of Texas

Prepared by Harry C. Green
Assistant Attorney General

Kerns Taylor, Chairman
W. E. Allen, Co-Chairman
Austin Bray
Ben Harrison
Gerald Ivey
Sig Aronson

SAMUEL D. MCDANIEL
Staff Legal Assistant

ALFRED WALKER
Executive Assistant

NOLA WHITE
First Assistant