

TEXAS TRANSPORTATION COMMISSION

ALL Counties

MINUTE ORDER

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The Texas Department of Transportation (department) has a long-standing reputation for integrity and ethical behavior. This reputation is a great source of pride for the department as well as one of the department's greatest assets because it instills the necessary trust and confidence that the public must have in any governmental agency. It is of utmost importance to the Texas Transportation Commission (commission) to continue to be good stewards of the taxpayer resources entrusted to the department.

The federal Sarbanes-Oxley Act (SOX) was signed into law in July of 2002, in large part as a response to the corporate and accounting scandals occurring in 2001 and 2002. SOX required publicly traded companies to adhere to significant new governance standards that broadened the roles of board members of those companies in overseeing financial transactions and auditing procedures. While SOX does not apply to private or non-profit companies or to governmental entities, the application of its general principles relating to internal financial controls and professional responsibility would enhance the level of accountability for department actions and reliability of department financial information.

Section 307 of SOX requires minimum standards of professional conduct for attorneys appearing and practicing before the Securities and Exchange Commission that include reporting requirements when the attorney becomes aware of a material violation of securities laws or similar violation by the company or a company's agent. Those standards could, by analogy, be applied to the general counsel in relation to the general counsel's duties to the department and commission. The standards applicable to general counsel, however, must also comply with the Texas Disciplinary Rules of Professional Conduct (Disciplinary Rules) that govern the actions of Texas attorneys in their representation of a governmental organization. There is a delicate balance between the duty to preserve client confidentiality and the duty to disclose a violation of a law or legal obligation. A governing consideration is the concept that the attorney represents the entity - not the individual officers, employees, or others associated with the organization. In the case of a state agency, the attorney's client includes state government as a whole. Under Rule 1.12 of the Disciplinary Rules, the attorney must take remedial actions within the organization whenever the attorney learns or knows that an officer, employee, or other person associated with the organization has committed or intends to commit a violation of a legal obligation to the organization or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization. The Disciplinary Rules further encourage the formulation of a stated policy of the organization to define the circumstances and prescribe the channels for reporting and review.

To maintain and build on the department's commitment to ethical behavior and integrity, and to enhance the level of accountability for department action, the commission desires to implement a reporting policy designed to provide to the executive director any evidence known by general counsel of an employee's or agent's material breach of a violation of the law or a legal obligation or fiduciary responsibility that is likely to result in substantial injury to the department or its reputation, and to then require the executive director to take appropriate remedial action.

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IT IS THEREFORE ORDERED by the commission that the following department policy is adopted:

- 1) If the general counsel becomes aware of a material breach of a legal obligation to the department or a fiduciary duty or a violation of law by any officer, employee, or agent of the department, that is likely to result in substantial injury to the department or its reputation, the general counsel shall report evidence of the breach or violation to the executive director, who shall respond to the evidence by taking appropriate action, including enforcing or, as necessary, adopting or initiating the adoption of appropriate remedial measures or sanctions with respect to the violation.
- 2) If, in the general counsel's judgment, the executive director does not appropriately respond to the evidence presented under paragraph (1) within a reasonable period of time or if the material breach or a violation involves the executive director, the general counsel shall report evidence of the breach or violation directly to the chair of the audit subcommittee or the chair of the commission.
- 3) If, in the general counsel's judgment, none of the people to whom the general counsel reports evidence under paragraph (1) or (2) appropriately responds to the evidence within a reasonable period of time or if the department is not capable of taking appropriate remedial action, the general counsel may report such evidence of a material breach directly to the Texas Office of the Attorney General.

Submitted and reviewed by:

Bob Quirk
General Counsel

Recommended by:

Amelia Jay
Executive Director

111675 JAN 29 09

Minute Number	Date Passed
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