



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 23

*June 4, 1992*

*Applicability of the "revolving door" prohibitions of article 6252-9b, V.T.C.S., to a former employee of a regulatory agency. (AOR-28)*

The Texas Ethics Commission has been asked to consider several questions about the interpretation of section 7A of article 6252-9b, V.T.C.S. Section 7A, which contains two "revolving door" prohibitions, provides in part as follows:

(a) A member of the governing body or executive head of a regulatory agency may not make, with the intent to influence, any communication to or appearance before an officer or employee of the agency in which the person served, before the second anniversary of the date the person ceases to be a member of the governing body or executive head of the agency, on behalf of any person in connection with any matter on which the person seeks official action.

(b) A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former officer or employee participated during the period of state service or employment, either through personal involvement or because the case or proceeding was a matter within the officer's or employee's official responsibility. This subsection does not apply to a rule-making proceeding that was concluded before the officer's or employee's service or employment ceased.

In short, subsection (a) applies to a former board member or executive head of a regulatory agency and prohibits the former board member or executive head from communicating with the agency in an attempt to influence agency action for a period of two years. Subsection (b) applies to any former officer or employee and prohibits, forever, the former officer or employee from performing work relating to matters in which the former officer or employee participated during his tenure with the agency.

The requestor's first question is whether a former division head in a state agency is an executive head of a regulatory agency for purposes of section 7A(a). Article 6252-9b does not define "executive head." That term, however, is generally understood to refer to the highest ranking employee of a board. Consequently, we conclude that it would not include employees below that rank such as the division head described in the requestor's letter.

The second question is whether a state employee who tendered his resignation in 1991 to be effective January 31, 1992, is subject to subsection (b), even if the employee took vacation time during all of January 1992. Section 7A(b) applies to a former employee of a state regulatory agency who ceased employment on or after January 1, 1992. The employee in question remained on the agency payroll after that date. As the requestor has described the situation, the fact that the employee was using vacation time in January did not affect his status as an employee. Consequently, we conclude that the employee in question "ceased employment" for purposes of section 7A(b) on January 31, 1992. Therefore, he is subject to the revolving-door prohibition set out in section 7A(b).<sup>1</sup>

The third question is whether a former state employee covered by section 7A(b) may give his new employer or a client of his new employer advice in regard to an audit of the client by a state agency if the former state employee worked on the audit during his tenure at the state agency. The revolving-door prohibition prevents a former employee from representing any person or receiving compensation for services rendered "regarding a particular matter in which the former . . . employee participated during the period of state service or employment." If a former employee advised his current employer in regard to an audit in which he had participated during his tenure with the state agency, he would be receiving compensation for services rendered in regard to that matter. Therefore, a former employee may not provide such advice.

The requestor also asks whether the former employee could give his new employer advice in regard to a subsequent audit of the same client. Whether a "new" audit would be a new matter or a continuation of an ongoing matter is a fact question. A critical factor in determining whether a new audit would be a new matter is whether the former employee had, by virtue of his former employment, access to information in regard to the new audit not available to the public that could be used to the advantage of his new employer or the disadvantage of his former employer.

### SUMMARY

Only the highest ranking employee of a state regulatory agency would be an "executive head" of the agency for purposes of section 7A(a) of article 6252-9b, V.T.C.S. A former employee whose resignation was effective on January 31, 1992, is subject to section 7A(b) of article 6252-9b, even if the former employee took vacation time on all working days in January. A former state employee covered by section 7A(b) may not give his new employer advice in regard to a matter in which the former state employee participated during his tenure with a state agency.

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<sup>1</sup> Section 7A(b) covers only employees paid at or above the amount prescribed for step 1, salary group 17, of the position classification salary schedule set out in the General Appropriations Act. The request letter states that the compensation of the employee in question exceeded that level.