



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 52

September 9, 1992

Whether the Texas Low-Level Radioactive Waste Disposal Authority is a "regulatory agency" subject to the revolving door provision of V.T.C.S. article 6252-9b. (AOR-88)

The Texas Ethics Commission has been asked to consider whether the Texas Low-Level Radioactive Waste Disposal Authority (the authority) is a "regulatory agency" for purposes of article 6252-9b, section 7A(b). Section 7A(b) is a revolving door prohibition. It provides as follows:

(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.¹

Subsection (f)(1) of section 7A defines "regulatory agency" for purposes of section 7A as follows:

"Regulatory agency" means any department, commission, board, or other agency that:

- (A) is in the executive branch of state government;
- (B) has authority that is not limited to a geographical portion of the state;
- (C) was created by the constitution or a statute of this state; and
- (D) has constitutional or statutory authority to engage in rule making, adjudication, or licensing.

The authority has jurisdiction over site selection, preparation, construction, operation, maintenance, decommissioning, closing, and financing of disposal sites, and it has a mandate to develop and operate one disposal site for the disposal of low-level waste in Texas. Health & Safety Code §§ 402.051, 402.052. It is in the executive branch of state government. *See Texas Liquor Control Bd. v. Continental Distilling Sales Co.*, 199 S.W.2d 1009, 1012 (Tex. Civ. App.--Dallas, writ ref'd n.r.e.), and *application denied*, 203 S.W.2d 288 (Tex. Civ. App.--Dallas), and *appeal dismissed*, 332 U.S. 747 (U.S. 1947). It has statewide jurisdiction and was created by statute. Health & Safety Code § 402.011. The authority also has rulemaking authority. *Id.* § 402.054. Therefore it is a regulatory agency for purposes of section 7A.

The requestor also asks whether the prohibition set out in section 7A(b) would apply if the interests of a private party from whom a former employee of the authority received compensation "coincided" with the interests of the authority. The fact that the interests of a private employer may coincide with the interests of the authority does not relieve a former employee of the authority from the burdens of section 7A.

SUMMARY

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The Texas Low-level Radioactive Waste Disposal Authority is a "regulatory agency" for purposes of article 6252-9b, section 7A. The fact that the interests of a private employer coincide with the interests of a state agency does not relieve a former employee of the state agency from the burdens of section 7A.

¹ The prohibition applies only to a state employee of a regulatory agency who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. V.T.C.S. art. 6252-9b, § 7A(c)(2). Also, if other law restricts the representation of a person before a particular state agency by a former state officer or employee of that agency, the other law prevails over this section. *Id.* § 7A(d).