



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 167

*September 2, 1993*

*Questions relating to a violation of section 572.054 of the Government Code. (AOR-184)*

The Texas Ethics Commission has received a request regarding the sanctions that may be imposed in connection with a violation of section 572.054 of the Government Code, formerly section 7A of article 6252-9b, V.T.C.S. Section 572.054 includes the following "revolving door" provision:

A former state officer or employee of a regulatory agency who ceases service or employment with that agency after January 1, 1992, may not represent any person or receive any 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.

Gov't Code § 572.054(b).<sup>1</sup> Subsection (f) provides that "[a]n individual commits an offense if the individual violates this section. An offense under this subsection is a Class A misdemeanor." Also, a violation of subsection (b) may be the basis of a sworn complaint filed with the Ethics Commission. *See id.* § 571.122 (filing sworn complaint against individual who has violated a law administered and enforced by the commission).

The requestor posits a situation in which a former employee undertakes a representation of a client in violation of subsection (b), and asks whether the agency "may or should" refuse to deal with the former employee in such a situation.

Although other law may be relevant to the requestor's inquiry, nothing in Government Code chapter 572 or any of the other statutes that this commission has authority to interpret states whether the agency "may or should" refuse to deal with the former employee. However, the fact that the legislature chose to criminalize representation by a former officer or employee in the situation defined by section 572.054(b) indicates that the legislature did not intend such representation to occur. Accordingly, we believe that a state agency may refuse to deal with a former officer or employee who is in violation of section 572.054.<sup>2</sup> The agency should consult with its legal counsel to ensure that the due process rights of both the representative and the person represented are protected.

The requestor has also asked whether the agency head or agency employees would commit an offense if the former employee were allowed to proceed with the representation, and whether an individual who allows a person to represent him in violation of section 572.054 commits an offense. The prohibition imposed by section 572.054(b) is placed solely on the former officer or employee of the regulatory agency, and section 572.054(b) directly provides a sanction only for that person's violation of the statute. On certain facts, a prosecuting attorney might pursue an action under Penal Code section 7.02, Criminal Responsibility for Conduct of Another,<sup>3</sup> against an individual who hires a former officer or employee to represent him in violation of section 572.054(b). The Texas Ethics Commission does not have interpretive authority in regard to section 7.02 of the Penal Code.

**SUMMARY**

A former state officer or employee of a regulatory agency covered by Government Code section 572.054(b) commits an offense if the former officer or employee represents any person or receives any 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. An agency may refuse to deal with a former officer or employee who attempts to represent an individual in violation of the statute, consistent with the due process rights of the individuals concerned. Nothing in the statutes the Texas Ethics Commission is authorized to interpret directly provides that a state officer or employee commits an offense by permitting a prohibited representation to take place, or that a person commits an offense by allowing himself to be represented in violation of the statute, though section 7.02 of the Penal Code provides for criminal responsibility for the conduct of another under certain circumstances.

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<sup>1</sup> Subsection (b) of section 572.054 applies only to: (1) a state officer of a regulatory agency; or (2) 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, including an employee who is exempt from the state's position classification plan. Gov't Code § 572.054(c). Subsection (b) does not apply to "a rulemaking proceeding that was concluded before the officer's or employee's service or employment ceased." Id. subsec. (d).

<sup>2</sup> The requestor has stipulated that the representation is indeed in violation of section 572.054(b), and our advice is based on that stipulation. We caution that in practical terms, the agency official or employee faced with a situation such as the one described may not know all the facts necessary to determine whether the representation would violate the statute.

<sup>3</sup> The requestor has stipulated that the representation is indeed in violation of section 572.054(b), and our advice is based on that stipulation. We caution that in practical terms, the agency official or employee faced with a situation such as the one described may not know all the facts necessary to determine whether the representation would violate the statute.