



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 220

August 12, 1994

Application of section 572.054 of the Government Code to a proposed grant from a state agency to an organization whose project director is a former member of the agency's governing board. (AOR-238)

The Texas Ethics Commission has been asked about the application of section 572.054 of the Government Code, the "revolving door" provision, to a situation involving a proposed grant from a state agency to a nonprofit organization whose "project director" was recently a member of the agency's governing board. The board has issued a request for proposals for implementation of a particular project. The organization's application to the board lists the former board member as "project director." We have been asked whether section 572.054(a) restricts the former board member's activities on behalf of the organization.

Section 572.054(a) states the following:

A former member of the governing body or a former executive head of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member or executive head served before the second anniversary of the date the member or executive head ceased to be a member of the governing body or the executive head of the agency if the communication or appearance is made:

- (1) with the intent to influence; and
- (2) on behalf of any person in connection with any matter on which the person seeks official action.

For purposes of chapter 572 of the Government Code, the board in question is a regulatory agency.¹ The grant application was made in the two-year period during which the revolving door restrictions apply. Those restrictions, however, apply to communications or appearances made with the intent to influence the agency *on behalf of any person* in connection with a matter before the agency. "Person" is defined in chapter 572 as "an individual or a business entity." Gov't Code § 572.002(7). A "business entity" is defined as "any entity recognized by law through which *business for profit* is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust." *Id.* § 572.002(2) (emphasis added). The organization seeking the grant from the agency in this case is neither an individual nor a "business entity" within chapter 572. According to its grant application it is a nonprofit organization. See [Ethics Advisory Opinion No. 213](#) n.1 (1994). Because the organization is neither an individual nor a "business entity," it is not a "person" for purposes of chapter 572 and the revolving door prohibition.² Thus section 572.054(a) is not applicable to the former board member's actions on behalf of this organization.

The requestor has also asked questions that can be answered only by law outside the commission's authority to interpret. For example, the requestor asks whether the organization is ineligible to receive the grant from the board if the board member participated in the matter while still a board member. The Government Code provisions relevant to this situation address only the restrictions on the conduct of the former state officer, and the sanctions against the former state officer for violations of the restrictions. We advise the requestor to consult

the appropriate authorities for information about other conflict of interest statutes that may be relevant to the facts presented.³

SUMMARY

The revolving door provision, Government Code section 572.054, does not restrict a former member of the governing board of a state agency from communicating with or appearing before the agency with the intent to influence agency action on behalf of a nonprofit organization.

¹ The requestor states that the agency involved does not have regulatory authority. The chapter 572 definition of "regulatory agency" is, however, very broad, including any statewide executive agency having the power to promulgate rules, as the board in this request does. Gov't Code §§ 572.002(8), 572.004. Therefore, section 572.054 is applicable to former members of the agency's governing board.

² We do not here address whether the listing of the former board member as project director constitutes a communication to the agency on behalf of the organization.

³ In particular, we note that Attorney General Opinion JM-671 (1987) held that section 6 of former article 6252-9b, now Government Code section 572.058(a), did not change the common law conflict of interest rule prohibiting contracts between a governmental body and an entity in which a member of the body has an interest. *See also Bexar County v. Wentworth*, 378 S.W.2d 126, 128-29 (Tex. Civ. App.—San Antonio 1964, writ ref'd n.r.e.); *Meyers v. Walker*, 276 S.W. 305, 307 (Tex. Civ. App.—Eastland 1925, no writ); Attorney General Letter Opinion 93-12 (1993).