



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 229

October 14, 1994

Whether a state agency may hire a former agency employee as an independent contractor to perform the duties of a hearings examiner. (AOR-255)

The Texas Ethics Commission has been asked whether a state agency may hire a former agency employee as an independent contractor to perform the duties of a hearings examiner. Specifically, the requestor asks if the former employee's selection as an independent hearings examiner violates the "revolving door" provision in section 572.054(b) of the Government Code.¹

Section 572.054(b) prohibits a former employee of a regulatory agency from representing any "person" or receiving compensation from anyone for services rendered on behalf of any "person" regarding a particular matter in which the former employee participated as a state employee. This request raises two issues concerning representation of a "person" under the revolving door prohibition.

We first consider whether the former employee is prohibited from seeking the independent contractor position. Chapter 572 defines "person" as "an individual or a business entity." Gov't Code § 572.002(7). In seeking employment the former employee would be representing himself regarding employment with the agency. *Cf. Ethics Advisory Opinion No. 44* (1992) (communications on behalf of any person include appearances on one's own behalf under subsection (a) of the revolving door statute). The subsection (b) prohibition on representation of a person, however, relates only to matters that were within the former employee's responsibility. Generally, the "matter" of an application for the former employee's own employment would not fall within this prohibition.

We next consider whether the former employee, if hired, would be receiving compensation for services rendered on behalf of a "person" in violation of section 572.054(b). A state agency is not a person for purposes of chapter 572. Gov't Code § 572.002(2), (7); *see also Ethics Advisory Opinion No. 220* (1994) (discussing meaning of person). Therefore, the revolving door prohibition in section 572.054(b) of the Government Code does not prohibit a former agency employee from working for the agency as an independent contractor.

SUMMARY

The revolving door prohibition in section 572.054(b) of the Government Code does not prohibit a former agency employee from working for the agency as an independent contractor to perform the duties of a hearings examiner.

¹ The requestor also asks about the applicability of "other state laws" to this situation. Section 572.054(e) of the Government Code provides that other law restricting representation of a person before a state agency prevails over section 572.054, the revolving door statute. We are not aware of another law that would override the revolving door statute in this instance.

Also, the Ethics Commission may only interpret six statutory schemes. *See Ethics Advisory Opinion No. 214* n.1 (1994). Of those, only chapter 572 is relevant.