



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 232

November 11, 1994

Applicability of revolving door provisions of the Government Code to a former officer or employee of a regulatory agency representing a nonprofit entity or governmental body. (AOR-260)

The Texas Ethics Commission has been asked to consider several questions about the "revolving door" provisions in section 572.054 of the Government Code.

Revolving Door Prohibitions

Section 572.054 contains two separate revolving door provisions. The first, which applies to former board members and former executive heads of regulatory agencies, provides as follows:

(a) 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.

Gov't Code § 572.054(a). In summary, under this provision a former board member or executive head of a regulatory agency is prohibited from making an appearance before or communication to the agency with the intent to influence the agency on behalf of any person in connection with any matter on which the person represented seeks agency action. The prohibition lasts two years from the time the former board member or executive head leaves the agency.

The second prohibition applies to former officers of regulatory agencies and to former employees of regulatory agencies who were paid at or above the level prescribed for step 1, salary group 17, of the position classification salary schedule in the general appropriations act at the time of leaving agency employment. 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.

Id. § 572.054(b). This restriction, which lasts forever, only applies *in regard to a particular matter* that the former officer or employee participated in as an agency officer or employee.

Representation Of A Nonprofit Entity Or Governmental Body

The request letter raises the following question about the application of the two revolving door provisions:

May a former employee of a regulatory agency appear before or communicate with the agency on behalf of another unit of government or a nonprofit association for compensation immediately after leaving employment with the agency?

The question focuses on the application of the two revolving door provisions to a former *employee* of a regulatory agency. We note that a former executive head is the only former *employee* subject to the provision set out in subsection (a) of section 572.054, that is, the two-year prohibition on communications and appearances generally. That prohibition applies to efforts "on behalf of any person." The applicable definition of "person" does not include a nonprofit entity or a governmental body. Gov't Code § 572.002(2), (7); [Ethics Advisory Opinions Nos. 229, 220](#) (1994). Therefore, the two-year prohibition set out in subsection (a) of section 572.054 does not prohibit a former executive head of a regulatory agency from appearing before or communicating with the agency on behalf of a nonprofit agency or a governmental body.

Similarly, the prohibition in subsection (b) of section 572.054 applies to representation of a "person" or receipt of compensation for services rendered on behalf of a "person." Therefore, subsection (b) of section 572.054 does not prohibit a former employee of a regulatory agency from representing a nonprofit entity or governmental body or from rendering services on behalf of a nonprofit entity or governmental body.

Work For Law Firm

The request letter also asks whether the revolving door provisions would apply if the former employee were working as a partner or employee of a law firm representing a nonprofit entity or governmental body. We think the question of whether a former employee who is now a partner or employee of a law firm is representing a "person" depends on the nature of the client the partner or employee of the law firm is representing. If the client is a nonprofit entity or governmental body, neither of the revolving door provisions would be applicable.

Communications To The Legislature

The remaining question raised in the request letter is whether a former employee of a regulatory agency may communicate with the legislature with the intent to influence legislative action on statutes administered by the regulatory agency. In our opinion, the revolving door prohibitions do not apply to communications to the legislature in regard to statutory changes. The prohibition in subsection (a) (the "two-year" provision applicable to former board members and executive heads of regulatory agencies) applies only to "communications to" and "appearances before" officers or employees of the regulatory agency. It does not apply to communications to or appearances before the legislature.

The prohibition set out in subsection (b) is not limited to communications to or appearances before the regulatory agency. It applies to any representation or receipt of compensation in regard to a "particular matter" the former employee worked on. In our opinion, however, the term "particular matter" does not include communications to the legislature regarding the statutes applicable to the regulatory agency.

"Particular matter" means "a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding." Gov't Code § 572.054(h) (2). All of these things involve the exercise of discretion by the agency. In contrast, decisions about legislation are matters for the legislature. Therefore, we conclude that pending legislation is not a "particular matter" for purposes of section 572.054(b).¹

SUMMARY

The revolving door provisions of the Government Code do not prohibit a former officer or employee of a regulatory agency from working for a nonprofit entity or governmental body after ceasing employment with the

agency. Nor does it prohibit a former officer or employee of a regulatory agency from performing work for a law firm on behalf of a nonprofit entity or governmental body.

Government Code section 572.054 does not prohibit a former employee of a state agency from communicating to the legislature in regard to statutes affecting the agency.

¹ In contrast, we think that an agency's decision about agency recommendations to the legislature would be a "particular matter" for purposes of the revolving door provisions.