



TEXAS ETHICS COMMISSION



****Overruled, Modified, Clarified, or Superseded****  **Opinion History**

ETHICS ADVISORY OPINION NO. 233

December 9, 1994

Whether the revolving door provisions in section 572.054 of the Texas Government Code apply to former employees of the Texas Natural Resource Conservation Commission. (AOR 261)

The Texas Ethics Commission has been asked whether the revolving door provisions in section 572.054 of the Government Code apply to former employees of the Texas Natural Resource Conservation Commission (TNRCC). Section 572.054 contains two separate revolving door prohibitions. One, which applies to former board members and executive directors of regulatory agencies, imposes a two-year moratorium on communications to the agency made with the intent to influence agency action. Gov't Code § 572.054(a). The other prevents board members and upper-level employees from working on particular matters they worked on at the agency. *Id.* § 572.054(b). See generally [Ethics Advisory Opinion No. 197](#) (1994).

The question raised here has to do with section 572.054(e), which provides:

Other law that restricts the representation of a person before a particular state agency by a former state officer or employee of that agency prevails over this section.

The question raised here is whether certain provisions dealing with the representation of persons before the Texas Natural Resource Conservation Commission prevail over the revolving door provisions in Government Code chapter 572 and, if so, to what extent.

The statutes governing the TNRCC contain three provisions regarding the involvement of former TNRCC employees in the handling of permit applications pending before the TNRCC. See Health & Safety Code §§ 361.0885, 382.0591; Water Code § 26.0283. Under these three provisions applications for certain permits issued by the TNRCC must be denied if a TNRCC supervisory or exempt employee "participated personally and substantially" in the commission's "review, evaluation, or processing" of the application while employed by the agency, *and* assisted with the "preparation or presentation of the application or legal representation of the applicant" after leaving the agency's employ. *Id.* The requestor asks whether these provisions bar the application of Government Code "revolving door" provisions to *all* TNRCC employees. We conclude that they do not.

Section 572.054 provides that other law prevails if it "restricts the representation of a person before a particular state agency by a former state officer or employee." The TNRCC "revolving door" provisions do not provide for sanctions against former employees who represent persons before the TNRCC in permit matters, but instead require denial of a permit. We think, nonetheless, that they can fairly be characterized as laws "that restrict representation of a person" before the TNRCC for purposes of section 572.054(e). Although the three TNRCC "revolving door" provisions prevail over section 572.054, this does not mean that *no* TNRCC employee is subject to the revolving door provisions in chapter 572 of the Government Code.

In enacting the revolving door provisions in chapter 572 of the Government Code, the legislature intended to restrict former state officers and upper-level state employees from representing persons before their former agencies in regard to matters in which they were involved while agency employees. At the time of enactment, employees in some agencies were subject to post-employment restrictions, and employees in other agencies were

not. We believe that by providing in section 572.054(e) that other law restricting representation prevails over section 572.054 the legislature intended to leave intact those restrictions that had been already put in place. This does not mean, however, that *all* employees of an agency are exempt from the provisions of section 572.054 of the Government Code if there is a law restricting *some* employees from representing persons before the agency.

The statutes restricting post-employment activity by former TNRCC employees address only the agency's permitting function. We conclude, therefore, that those provisions prevail over section 572.054 of the Government Code only to this extent: A former TNRCC employee who participated in the handling of a permit application covered by Health and Safety Code sections 361.0885 and 382.0591 or Water Code section 26.0283 is subject to those provisions, not to section 572.054 of the Government Code, for purposes of determining whether he or she may represent a person in regard to a permit matter before the TNRCC.¹

SUMMARY

Former employees of the Texas Natural Resources Conservation Commission are subject to the revolving door provisions in section 572.054 of the Government Code with the following exception: A former TNRCC employee who participated in the handling of a permit application covered by Health and Safety Code sections 361.0885 and 382.0591 or Water Code section 26.0283 is subject to those provisions, not to section 572.054 of the Government Code, for purposes of determining whether he or she may represent a person in regard to a permit matter before the TNRCC.

¹ We note that the attorney general issued an opinion determining that Government Code section 572.054 does not apply to employees of the Public Utilities Commission (PUC), because the Public Utilities Regulatory Act (PURA) prohibits former employees from post-employment work on matters in which they were involved as employees. Attorney General Opinion DM-209 (1993). Unlike the statutes under consideration in this opinion, the PURA restrictions apply to all PUC employees, and so the Government Code prohibition is inapplicable to all PUC employees.