



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 246

*February 24, 1995*

*Whether a former member of the State Board of Education may communicate with local school districts on behalf of a textbook publisher. (AOR-272)*

The Texas Ethics Commission has been asked about the application of Government Code section 572.054, the "revolving door" statute, to a former member of the State Board of Education. Specifically, the requestor asks whether a former member may represent a textbook publisher in connection with the textbook publisher's dealings with local school districts. The requestor provides the following background information.

[T]he State Board of Education adopts textbooks for use in the public schools of the state. . . . The process for adoption begins with a "proclamation" issued by the State Board which invites publishers to submit textbooks for adoption and sets the specifications required for adoption. A "subject area committee" of experts in the particular field is appointed by the Board, reviews the proposed texts and submits a recommendation to the State Board. The Board adopts books from the list submitted by the committee. The Chair of the State Board signs the actual contract with the publisher on behalf of the Board after a textbook is adopted. Local school districts are generally limited to State Board of Education-adopted textbooks for purposes of the state-funded textbook system, although a waiver may be granted. The actual purchase of the textbook is by the state at the request of a school district, with the textbook remaining state property. (Footnotes to cites omitted.)<sup>1</sup>

The revolving door statute contains two separate prohibitions. The first, section 572.054(a), applies to former board members and executive directors of regulatory agencies.<sup>2</sup> It imposes a two-year moratorium on communications to, or appearances before, an officer or employee of the *agency* in which the former member served, if made with the intent to influence agency action on behalf of any person seeking official action. Govt Code § 572.054(a). This provision prohibits a former member of the State Board of Education from representing a textbook publisher in communications with the State Board of Education. By its terms, however, the prohibition is not applicable here because the communication in question is with *local school districts*, not with the State Board of Education.

The second prohibition provides as follows:

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). In short, this prohibits a former member of the State Board of Education from working on a "matter" the former board member participated in as a member of the state board. The question here, therefore, is whether efforts to encourage a local school district to purchase a particular textbook may be a "matter" that the former state board member participated in.

The statutory definition of a "particular matter" is "a *specific* investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding." *Id.* § 572.054(h)(2) (emphasis added). The commission has determined that a "matter" is something that involves the exercise of discretion by a particular agency. [Ethics Advisory Opinion No. 232](#) (1994) (former agency employee may communicate to the legislature regarding the agency). In this instance the former member would be attempting to influence the exercise of discretion by the local school board, not by the State Board of Education. The exercise of discretion by a different governmental body is not a "matter" in which the former member participated. Therefore, section 572.054(b) does not prohibit a former member of the State Board of Education from representing a textbook publisher before a local school board.

The Ethics Commission has received several letters urging that the representation in question here should not be permitted. We note that the legislature has attempted to limit the influence of textbook publishers in certain other contexts. *See* Educ. Code §§ 4.14 (prohibiting rebates on textbooks to teachers or school board members), 4.27(a), 11.22(e) (both prohibiting campaign contributions to State Board of Education members from textbook publishers). The revolving door prohibitions in section 572.054 of the Government Code, however, do not apply in the specific circumstances described in this request.

### SUMMARY

The revolving door provisions of section 572.054 of the Government Code do not prohibit a former member of the State Board of Education from representing a textbook publisher in a matter to be decided by a local school board.

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<sup>1</sup> The request letter cites provisions of Education Code chapter 12 and Texas Administrative Code, title 19, chapter 67, for this information.

<sup>2</sup> The State Board of Education is a "regulatory agency" for purposes of section 572.054. *See* Gov't Code § 572.002(8); *see also* [Ethics Advisory Opinion No. 154](#) (1993) (identifying a "regulatory agency").