



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 275

September 8, 1995

Whether a former commissioner or a former executive director of the Texas Natural Resource Conservation Commission (TNRCC) may participate in certain types of permit matters filed after the former commissioner's or former executive director's service at the TNRCC ended. (AOR-309)

The Texas Ethics Commission has been asked to consider whether a former commissioner or a former executive director of the Texas Natural Resource Conservation Commission (TNRCC) may participate in certain types of permit matters filed after the former commissioner's or former executive director's service at the TNRCC ended. Specifically, the requestor asks about permits governed by sections 361.0885 and 382.0591 of the Health and Safety Code and by section 26.0283 of the Water Code.

Generally, former members of the governing boards of state agencies and former executive directors of state agencies are subject to the two revolving door provisions in section 572.054 of the Government Code. One of those provisions 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 former board members and former executive directors (as well as certain other former employees) from working on particular matters they worked on at the agency. *Id.* § 572.054(b). Section 572.054(e) provides, however, that "[o]ther 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."

In [Ethics Advisory Opinion No. 233](#) (1994) this commission considered the effect of the section 572.054(e) "preemption" provision in connection with Health and Safety Code sections 361.0885 and 382.0591 and Water Code section 26.0283. Those three provisions restrict the involvement of certain former TNRCC employees in the handling of permit applications before the TNRCC. The opinion concluded that those provisions prevail over section 572.054 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." [Ethics Advisory Opinion No. 233](#) at 2.

[Ethics Advisory Opinion No. 233](#) specifically addressed a matter in which a former officer or employee of the TNRCC participated during his tenure at the TNRCC.¹ In contrast, the present request raises the question about the effect of Health and Safety Code sections 361.0885 and 382.0591 and Water Code section 26.0283 on a former officer or employee who did not participate at all in a particular permit matter, either because the former officer or employee did not deal with permit matters during his tenure at the TNRCC or because the matter arose after his departure.

As we stated in [Ethics Advisory Opinion No. 233](#), we believe that by providing in section 572.054(e) that other revolving door provisions prevail over section 572.054, the legislature indicated an intent to leave specific resolutions of "revolving door" questions intact despite the enactment of revolving door provisions of general applicability. The legislature specifically addressed the "revolving door" matter in the context of the permit matters subject to Health and Safety Code sections 361.0885 and 382.0591 or Water Code section 26.0283. Therefore, former officers and employees of the TNRCC should look to those provisions, not to section 572.054

of the Government Code, to determine whether they may work on a permit matter. This conclusion applies both to matters pending at the time a former officer or employee left the TNRCC and also to permit matters filed after a former officer or employee left the TNRCC.

SUMMARY

Former officers and employees of the TNRCC should look to Health and Safety Code sections 361.0885 and 382.0591 and Water Code section 26.0283, not to section 572.054 of the Government Code, to determine whether they may work on a permit matter.

¹ One effect of the conclusion in [Ethics Advisory Opinion No. 233](#) is that certain former employees of the TNRCC who participated in a permit matter but whose participation was not personal and substantial are not restricted from working on the matter. In this respect, the TNRCC revolving door provisions are more lenient than the revolving door provision in section 572.054 of the Government Code, which restricts a former officer or employee from working on a matter if he either was personally involved in a matter or if it was within his supervisory authority while with the agency.