



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 285

October 13, 1995

The Texas Ethics Commission has been asked to construe the meaning of "participated" in the revolving door provision set out in section 572.054(b) of the Government Code. (AOR-319)

The Texas Ethics Commission has been asked to construe the meaning of "participated" in the revolving door provision set out in section 572.054(b) of the Government Code. That provision restricts certain former officers and employees from representing persons in connection with matters the officers and employees participated in during their tenure with the state. The specific question is whether a former employee of a state agency "participated" in a matter he was unaware of during his tenure at the state agency based on the fact that the employees who had personal involvement with the matter were subordinate to him in the agency personnel hierarchy.

Section 572.054(b) provides as follows:

A former state officer or employee . . . 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.

That provision describes two types of "participation," participation in the form of personal involvement and participation based on the fact that a matter was within the officer's or employee's official responsibility. The import of those descriptions is that the word "participation" does not necessarily imply personal involvement. Rather, it suggests that "participation" in a matter can be nothing more than having authority over the individuals who do have personal involvement with a matter, even if that authority is not actively exercised.

It has been suggested, however, that the applicable statutory definition of "participated" undercuts that reading of the statute. The statute defines "participated" to mean "to have taken action . . . through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action." Gov't Code § 572.054(h)(1). Although that definition equates "participation" with "action," we do not think that definition overcomes the language in section 572.054(b) that describes "participation" in a matter to include being in a position of authority over those who have personal involvement in the matter. Read in its entirety, we think the revolving door law makes clear that the legislature intended section 572.054(b) to restrict a former officer or employee from receiving compensation in connection with any matter over which the former officer or employee had authority, even if the former officer or employee was not aware that his subordinates were working on the matter. *See Green v. State*, 773 S.W.2d 816 (Tex. App.—San Antonio 1989, no pet.) (Penal statutes are not construed so strictly as to defeat the obvious legislative intent).

SUMMARY

The revolving door law restricts certain former state officers and employees from receiving compensation in connection with any matter over which the former officer or employee had authority, even if the former officer or employee was not aware that his subordinates were working on the matter.