



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 292

December 15, 1995

Application of the revolving door restrictions in Government Code chapter 572 to a former commissioner or deputy commissioner of the Texas Health and Human Services Commission. (AOR-327)

The Texas Ethics Commission has been asked several questions regarding the application of the revolving door restrictions in Government Code chapter 572 to a former commissioner or deputy commissioner of the Texas Health and Human Services Commission. The Texas Health and Human Services Commission (THHSC) oversees and coordinates the various health and human services state agencies, such as the Texas Department of Health, the Texas Department of Human Services, and the Department of Protective and Regulatory Services. Gov't Code ch. 531. It is also the agency designated to administer federal medical assistance funds ("Medicaid"). *Id.* Gov't Code § 531.021. The requestor asks whether the revolving door provisions restrict a former commissioner or deputy commissioner from working as a private consultant to one of the agencies within the umbrella of THHSC, or from working for a firm seeking to contract with THHSC or one of the agencies under its purview.

Section 572.054 of the Government Code 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. We assume that a former deputy commissioner would be such an employee. This prohibition 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. (Emphasis added.)

A "person" is defined as an individual or a business entity. *Id.* § 572.002(7). Therefore, a former commissioner or deputy commissioner of THHSC may work as a private consultant to a state agency, even if the work entails providing services with the intent to influence THHSC action, because a state agency is not a "person" within the meaning of the statute.

If the former commissioner or deputy commissioner works for a private firm seeking to contract with THHSC, the revolving door prohibitions may apply. A former commissioner would not be permitted to "make any communication to or appearance before an officer or employee" of THHSC on behalf of the firm or any other "person" for two years after ceasing to be commissioner.¹ If a firm employing a former commissioner or a former deputy commissioner seeks to contract with THHSC, the former commissioner or deputy commissioner would not be permitted to provide services for the firm relating to a "particular matter" in which the individual had participated while with THHSC. A "particular matter" is defined as 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).

The revolving door restrictions would not, however, extend to communications or services relating to any of the health and human services agencies within the THHSC umbrella. We find no indication in the statutory language to suggest that the revolving door restrictions are intended to reach activity directed to any agency other than the one with which the former commissioner, executive director, or employee was connected. See [Ethics Advisory Opinion No. 232](#) (1994) (revolving door restrictions do not prohibit communications to legislature about statutes administered by former agency); [Ethics Advisory Opinion No. 246](#) (1995) (revolving door restrictions do not apply to communications to local school districts by former member of State Board of Education).

SUMMARY

The revolving door statute does not restrict a former commissioner or deputy commissioner of the Texas Health and Human Services Commission from engaging in activities on behalf of persons seeking action from one of the health and human services agencies within the purview of the commission.

¹ Cf. [Ethics Advisory Opinion No. 232](#) (1994) (former employee of regulatory agency who works for private law firm may represent client before former agency if client is non-profit entity or governmental body).