



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 324

May 10, 1996

*Whether a former employee of the Texas Natural Resource Conservation Commission may work on the certification of a groundwater monitoring system if the former employee reviewed and approved or supervised the review and approval of the ground water monitoring system during the permit application process while employed by the agency. (AOR-359)*

The Texas Ethics Commission has been asked about the application of the revolving door provision, Gov't Code § 572.054, to a former employee of the Texas Natural Resource Conservation Commission (the "TNRCC"). The requestor informs us that the former employee participated in the review and approval of a groundwater monitoring system as part of the commission's review of a permit application for a municipal solid waste landfill. Subsequent to the approval of the permit application, the federal government adopted regulations requiring landfill owners and operators to have their groundwater monitoring systems certified by a qualified groundwater scientist. The TNRCC implemented the federal requirement through adoption of rules set out at title 30, section 330.231(e), of the Texas Administrative Code. The certification requirement applies to all groundwater monitoring systems, regardless of whether they have already received permits from the TNRCC. The former employee, in his capacity as a privately employed engineer, proposes to submit the required certification for the groundwater monitoring system in place when he participated in the review and approval of the permit application for the landfill.<sup>1</sup>

The revolving door provision relevant to the present request states the following:

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.

Gov't Code § 572.054(b).<sup>2</sup> 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)(2). The particular matter in which the former employee participated while with the TNRCC was the review and approval of a groundwater characterization report in conjunction with a permit application submitted under TNRCC rule 330.56(e). 30 T.A.C. § 330.56(e). The work the former employee proposes to do is not in regard to this permit application; rather, it relates to a separate requirement to submit a certification that a groundwater monitoring system meets certain federal requirements. The fact that the certification will involve review of the same groundwater monitoring system involved in the permit application review does not mean that submission of the certification constitutes work on the same matter on which the individual worked as a state employee. See [Ethics Advisory Opinion No. 23](#) (1992) (new audit of same person audited while former employee was employed by agency is not a matter in which former employee participated for purposes of revolving door provision). Therefore, the revolving door provision does not prohibit the former employee from working on the certification of the groundwater monitoring system.

## SUMMARY

The revolving door provision in Government Code section 572.054(b) does not prohibit a former employee of the Texas Natural Resource Conservation Commission from working on the certification of a groundwater monitoring system even though the former employee reviewed and approved or supervised the review and approval of the groundwater monitoring system during the permit application process while employed by the agency. The certification of a groundwater monitoring system and the review of a permit application are separate matters.

---

<sup>1</sup> Because the former TNRCC employee is not assisting an applicant or seeking action on a permit matter, the activity in question does not fall within the more specific revolving door provisions applicable to certain TNRCC employees. [Ethics Advisory Opinion No. 233](#) (1994).

<sup>2</sup> This provision applies only to a state officer of a regulatory agency, or to an employee of a state regulatory agency "who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriation Act for step 1, group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan." Gov't Code § 572.054(c). The former employee in the present request was such an employee.