



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 365

April 11, 1997

Application of Government Code section 572.054(b) to a former employee of the Department of Transportation. (AOR-402)

The Texas Ethics Commission has been asked about the application of the revolving door provision in Government Code section 572.054(b) to a former employee of the Texas Department of Transportation. Section 572.054(b) provides that certain former employees of state regulatory agencies "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."

The former employee in question was employed by the Department of Transportation as a district right-of-way administrator at a salary level that makes him subject to the prohibition in section 572.054(b).¹ In his position as district right-of-way administrator, the former employee was in charge of property acquisition for a region of the state. This meant that the former employee was in charge of the process whereby the department established the ownership and value of a particular piece of property, negotiated the purchase or handled the condemnation of the property, and handled the transfer of title. The process included tasks such as making property estimates and map revisions and coordinating matters with local government agencies, utility companies, fee appraisers, attorneys, title companies, real estate agents, technical experts, and individual property owners.

The former Department of Transportation employee is now employed by a private company that is under contract with the Department of Transportation to provide certain services that are part of the acquisition process overseen by the district right-of-way administrator. The former employee will, in his private employment, research property ownership and oversee review of right-of-way maps, plats, and property descriptions of specific pieces of property. During his tenure as a Department of Transportation employee, the former employee performed tasks in the acquisition process in regard to some of the same pieces of property. The question raised here is whether the individual's work for his private employer in regard to those pieces of property will involve the same "matters" that the individual participated in as an employee of the Department of Transportation.

For purposes of the revolving door law, 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." Gov't Code § 572.054(h)(2). In previous opinions, we have stated that "particular matter" refers to a specific proceeding involving the exercise of discretion by the agency. [Ethics Advisory Opinion Nos. 353, 345](#) (1996); [246](#) (1995); [232](#) (1994). For example, we concluded that a sales tax audit and a redetermination proceeding in which the audit findings were disputed were the same matter since the redetermination proceeding was, in essence, an appeal of the fact findings reached in the audit. [Ethics Advisory Opinion No. 337](#) (1996). Similarly, in this instance we find that the acquisition process in regard to a specific piece of property is one matter. All of the tasks performed in the acquisition process are relevant to the determination of the means whereby and the terms on which the department acquires a specific piece of property. Because all parts of the acquisition process in regard to a specific piece of property are part of one matter, a former employee who participated in the matter of the acquisition of a specific piece of property may not represent a private business entity or receive compensation from a private business entity for services in regard

to the Department of Transportation's acquisition of the same piece of property. *See generally* Gov't Code § 572.054(h)(1) (defining "participated"); [Ethics Advisory Opinion No. 232](#) (1994) ("person" for purposes of the revolving door law does not include a nonprofit entity).²

The request letter also states that part of the former employee's job with his private employer will be to assure that his private employer complies with various Department of Transportation procedures that the former employee participated in drafting. The matter of assuring compliance with an agency rule or policy is not part of the same matter as the matter of drafting or adopting the agency rule or policy. *See* Gov't Code § 572.054(d). Therefore, the former department employee is not prohibited from receiving compensation for assuring that his private employer complies with department procedures as long as the former employee is not working on a specific matter such as the acquisition of a specific piece of property that the former employee participated in as a department employee.

SUMMARY

A former employee of the Department of Transportation who participated in the matter of the acquisition of a specific piece of property may not represent a private business entity or receive compensation from a private business entity for services in regard to the department's acquisition of the same piece of property.

The matter of assuring compliance with an agency rule or policy is not part of the same matter as the matter of drafting or adopting the agency rule or policy.

¹ The prohibition in section 572.054(b) applies to a former employee who was compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule. Gov't Code § 572.054(c)(2).

² It is possible that the interests of the Department of Transportation and the interests of the private entity employing the former department employee in regard to a particular matter do not differ. The revolving door provision in section 572.054(b) nonetheless prohibits the former department employee from representing a private business entity or receiving compensation from a private business entity for work in regard to a matter he participated in as an employee of the Department of Transportation. [Ethics Advisory Opinion No. 52](#) (1992) (fact that the interests of a private employer coincide with the interests of a state agency does not relieve a former agency employee working for the private employer of the burdens of the revolving door law).