



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 397

*April 17, 1998*

*Whether the revolving door provision in Government Code section 572.054(b) applies to a former employee of a regulatory agency who, as an agency employee, participated in choosing a contractor to perform a feasibility study on a project. The former employee's current employer has contracted to perform an environmental study in connection with the same project. (AOR-435)*

A former employee of the Texas Department of Transportation (TxDOT) has asked the Texas Ethics Commission to consider a question about the application of the "revolving door" provision in Government Code section 572.054(b). The provision in question provides as follows:

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>1</sup>

This opinion request raises questions about what it means to "participate in a particular matter." The requestor explains that, as a TxDOT employee, he was a member of a committee that evaluated various consultants who were seeking to contract with TxDOT to perform a feasibility study on a particular project. The evaluation committee made a recommendation to another agency committee, which selected a private consultant to perform the feasibility study. After the private consultant completed the feasibility study, TxDOT contracted with a different private consultant to analyze the environmental impact of the various alternatives that the first private consultant had proposed in the feasibility study.

The former TxDOT employee who requested this opinion is now employed by the second private consultant, the one that has contracted to do the environmental study. The question here is whether the former TxDOT employee may receive compensation from his employer for services rendered in connection with that environmental study. The answer to that question depends on whether the requestor "participated in the matter" of the environmental study as a TxDOT employee.

For purposes of the revolving door law, "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) (emphasis added). Thus, the contract for the feasibility study is a separate matter from the contract for the environmental study. [Ethics Advisory Opinion Nos. 364 \(1997\); 353 \(1996\)](#). The fact that the two studies are products of different matters does not, however, answer the question of which matters the requestor participated in.

In the revolving door law "participated" means "to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action." Gov't Code §

572.054(h)(1). Clearly, the former employee participated in the matter of the feasibility study through his involvement in making a recommendation about a consultant. The question here is whether he thereby also participated in the environmental study since the results of the feasibility study serve as the basis for the environmental study.

A conclusion that a particular work activity constitutes participation in one matter does not necessarily preclude the conclusion that the same activity also constitutes participation in another matter. In circumstances in which two matters are interdependent pieces of a larger project, an agency employee's "participation" in one of the matters would also constitute "participation" in the other matter if the employee's work on the first matter is being reviewed or analyzed in the second matter. *See generally Ethics Advisory Opinion No. 337 (1996)* (redetermination proceeding is part of the underlying matter). For example, the individuals who actually generated the substance of the feasibility study participated in the matter of the environmental study because the environmental study is a further analysis of the conclusions of the feasibility study.

In regard to the requestor, we conclude that his work in connection with the feasibility study does not constitute participation in the matter of the environmental study. His work in connection with the feasibility study had nothing to do with the substantive conclusions of the feasibility study that are to be examined in the environmental study. Therefore, he may receive compensation from his employer for services rendered in connection with that environmental study.

### SUMMARY

Separate contracts are separate "matters" for purposes of the revolving door provision in Government Code section 572.054(b). The conclusion that a specific work activity constitutes "participation in" one matter, however, does not necessarily preclude the conclusion that the same work also constitutes "participation in" another matter.

---

<sup>1</sup> Government Code section 572.054 states that the revolving door provision in section 572.054(b) applies to "a state employee of a regulatory agency who is 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, including an employee who is exempt from the state's position classification plan." Gov't Code § 572.054(c)(2). That provision has remained unchanged since the revolving door statute was enacted in 1991. S.B. 1, Acts 1991, 72d Leg., ch. 304, § 3.07, at 1319. In the 1997 legislative session, however, the legislature restructured the position classification salary schedule in the appropriations act. Now there are three separate classification salary schedules--schedules A, B, and C--and each schedule has a "group 17." *See General Appropriations Act, 75th Leg., ch. 1452, art. IX, p. IX-31-33, 1997 Tex. Sess. Law Serv. 5535, 6342-44.* As a general rule, a position classified as "step 1, salary group 17" under the old schedule was reclassified as "step 1, salary group A17." *Id.* p. IX-34, 1997 Tex. Sess. Law Serv. 5535, 6345. We conclude, therefore, that the reference to "step 1, salary group 17" in Government Code section 572.054(c)(2) should now be read as "step 1, salary group A17." In other words, Government Code section 572.054(b) applies to a former state employee of a regulatory agency whose ending pay was at or above the level prescribed for step 1, salary group A17, of the position classification salary schedule.