



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 419

September 2, 1999

Whether a former employee of a regulatory agency may perform work for a private employer on a project funded by the regulatory agency. The project is similar to a project that the agency considered but did not fund while the requestor worked for the agency. (AOR-462)

The Texas Ethics Commission has been asked about the application of the revolving door provision in Government Code section 572.054(b) to a specific situation.

The requestor is a former employee of a state regulatory agency and is considering an opportunity to perform work on a project funded by that agency. The request letter states that the agency provided funding for the project in response to an application submitted in 1999, when the requestor no longer worked for the agency. The requestor is nonetheless concerned about the revolving door law because the project funded pursuant to the 1999 application is similar to projects proposed in applications submitted to the department in 1997 and 1998. The requestor worked at the agency when the earlier applications were submitted and participated in the review of those applications as well as all other applications submitted.

The revolving door provision at issue here 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) (emphasis added).¹ The question here is whether the 1999 application is part of the same "matter" as the previous applications.

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). The Ethics Commission has stated that the term "particular matter" refers to a particular proceeding rather than to a particular subject matter. [Ethics Advisory Opinion Nos. 365, 364](#) (1997); [353, 345](#) (1996); [246](#) (1995); [232](#) (1994). In other words, the fact that two different proceedings involve the same subject matter does not mean that the two proceedings are the same "matter" for purposes of the revolving door law. [Ethics Advisory Opinion No. 324](#) (1996) (review of permit for landfill and certification of groundwater monitoring system for same landfill are separate matters).

The request letter states that the successful 1999 applicant was a member of a partnership that had submitted the unsuccessful 1997 and 1998 applications. It also states that the project proposed in the three applications was essentially the same but that the 1999 application proposed different means of carrying out the project. Each application was evaluated and ranked according to its merits in relationship to all applications submitted in the same year for funding from the pool of money available that year.

We conclude that each application was a separate matter. Most important, of course, is the fact that the statute states that an application is a matter. Also, the 1999 application was not a request for a review or reconsideration of a previous agency decision. *See generally* [Ethics Advisory Opinion No. 337](#) (1996) (audit and redetermination proceeding reviewing audit findings are part of same matter). Rather each application was evaluated independently in light of the other applications submitted, as well as the money available in a particular year. Consequently, the requestor would not be violating Government Code section 572.054(b) by working on the project funded pursuant to the 1999 application.

SUMMARY

A former employee of a regulatory agency would not violate Government Code section 572.054(b) by working on a project funded by that agency in the circumstances described in this opinion.

¹ That provision applies to a former state officer or 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 schedule in the General Appropriations Act. *See* [Ethics Advisory Opinion No. 397](#), n.1 (1998).