



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 426

January 14, 2000

*Regarding the application of the revolving door provision in Government Code section 572.054 to a former employee of a state agency who has the opportunity to contract with a publishing company to write a book that deals with subject matter relevant to the work of the state agency. (AOR-469)*

The Ethics Commission has been asked about the application of the revolving door provision in Government Code section 572.054 to a former employee of a state agency who has the opportunity to contract with a publishing company to write a book that deals with subject matter relevant to the work of the state agency. The request letter provides the following information about the proposed contract:

The book is expected to be endorsed by [the state agency] with a letter to Texas business owners and the [state agency] will get final approval of editorial content if it endorses the book's publication. The [state agency] will not contribute any money toward the publication of the book or the contract between the publishing company and the author of the book.

In my previous role, I did receive at least two unsolicited phone calls from the publishing company concerning its book proposal. Information on the proposal was passed on to the [state agency's] Executive Director and General Counsel. . . .

No endorsement agreement has yet been signed between the [state agency] and the publishing company.

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).<sup>1</sup> The question raised here requires us to focus on whether the requestor would be receiving compensation for services in connection with "a particular matter" before the state agency and, if so, whether the requestor "participated" in that matter during his tenure at the state agency.<sup>2</sup>

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). 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. 365](#) (1997); [345](#) (1996); [246](#) (1995); [232](#) (1994). For example, we have said that all tasks leading up to a determination by the Department of Transportation to purchase or not purchase a specific piece of property are part of one matter. [Ethics Advisory Opinion No. 365](#) (1997). Similarly, we conclude that all tasks that are part of a regulatory agency's involvement in negotiating or executing a book endorsement contract are part of the

“matter” of the book endorsement. If a former employee of the state agency participated in any of those tasks, then the former employee could not receive compensation from a publisher for writing any part of the material that would be the subject of the contemplated endorsement.

The remaining question then is whether the requestor “participated” in the matter of the book endorsement. For purposes of 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). The requestor states that he received “at least two unsolicited phone calls” from the publishing company concerning the proposal. He also states that information about the proposal “was passed on” to the agency’s executive director and general counsel. Assuming that it was the requestor who passed on the information and also assuming that the requestor did nothing more than act as a receptionist and messenger, then the requestor’s actions would not constitute “participation” in the matter of the book endorsement for purposes of the revolving door law. If, on the other hand, the requestor, as an employee of the state agency, offered advice or analysis in connection with the proposal, the requestor’s actions would constitute “participation” in the matter of the book endorsement for purposes of the revolving door law. In that case, the requestor could not receive compensation for writing any part of the material that would be the subject of the contemplated endorsement.

### SUMMARY

All tasks that are part of a regulatory agency’s involvement in negotiating or executing a book endorsement contract are part of the “matter” of the book endorsement. If a former state employee had offered advice or analysis in connection with the matter of the endorsement, he or she could not receive compensation for writing any part of the material that would be the subject of the contemplated endorsement.

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<sup>1</sup> 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).

<sup>2</sup> The state agency in question is a regulatory agency for purposes of Government Code chapter 572. *See Ethics Advisory Opinion No. 220* (1994).