



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 469

*March 24, 2006*

*Whether a former state employee who, while an employee of a state agency testified as an expert on the agency's rules in a lawsuit to which the state was not a party, may represent a litigant in that lawsuit. (AOR – 532)*

The Texas Ethics Commission has been asked about the application of section 572.054(b) of the Government Code, the “revolving door” statute, to an individual formerly employed by a regulatory state agency. Specifically, the requestor asks whether the former state employee who, while an employee of the agency testified as an expert on the agency’s rules in a lawsuit to which the state of Texas was not a party, may represent a litigant in that lawsuit.

As background information the request letter provides that the testimony at issue was in response to a subpoena. The request letter also provides that the former state employee did not want to testify and that the testimony was limited to testimony by deposition.

The revolving door statute contains two separate prohibitions. The one 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). In short, this prohibits a former state employee from working on a “matter” the former state employee “participated” in as an employee of the state agency. The question here, therefore, is whether by testifying as an expert on the state agency’s rules, in response to a subpoena in a lawsuit to which the state was not a party, is a matter in which the former state employee “participated.”

The statutory definition of “participated” is to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action. *Id.* § 572.054(h)(1). The statutory definition of “particular matter” is 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). We do not think that the provision of the testimony at issue constituted taking action as an officer or employee of the agency through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action because the agency was not a party in the lawsuit. In other words, we do not think that responding to a subpoena to testify as an expert on the state agency’s rules in a lawsuit to which the state was not a party meets the statutory definition of “participated.” Therefore, the former state employee who, while an employee for the state agency testified as an expert on the state agency’s rules in a lawsuit to which the state agency was not a party, may represent a litigant in that lawsuit.

**SUMMARY**

An individual formerly employed by a state regulatory agency who, while an employee for the state agency testified as an expert on the state agency's rules in a lawsuit to which the state of Texas was not a party, may represent a litigant in that lawsuit.