



# TEXAS ETHICS COMMISSION



## ETHICS ADVISORY OPINION NO. 496

*February 23, 2011*

*Whether the revolving door law prohibits a former employee of the Texas Department of Transportation from performing certain services related to road projects. (AOR-560)*

The Texas Ethics Commission has been asked whether the revolving door provision in section 572.054(b) of the Government Code applies to a former employee of the Texas Department of Transportation (TxDOT). The requestor was employed by TxDOT as an environmental manager until her employment was terminated in November 2008.

According to the facts stated within the request, the requestor was the project manager for TxDOT projects related to the construction of two roads crossing between Bexar and Medina Counties. While employed by TxDOT, the requestor oversaw an environmental assessment covering a controlled-access, four-lane state highway (SH 211). The project would have constructed a highway between both counties to connect two separate segments of pre-existing SH 211 and increased the number of lanes on the pre-existing portions from two to four. The requestor also oversaw the production of, and partially wrote, an environmental assessment covering a proposed expansion of a farm-to-market road (FM 1957) from two lanes to six lanes within both counties that would have required the acquisition of new right-of-way. Both environmental assessments were submitted to, and subsequently rejected by, TxDOT and the Federal Highway Administration.

Since her termination by TxDOT, the requestor became employed by an engineering firm (the firm) and TxDOT has approved new projects for both of the roads in connection with a pass-through agreement with Bexar County. Under this agreement, private property owners are responsible for paying for and receiving environmental approvals, acquiring right-of-way, and providing design for projects on the roads. The firm has been hired by a private contractor to fulfill the obligations to the county and the county would construct the road improvements on behalf of TxDOT. The requestor states that the new project regarding SH 211 would construct a two-lane highway within two counties to connect the pre-existing segments of SH 211 and requires the submission of an environmental impact statement or state categorical exclusion. Regarding FM 1957, the requestor states that the new project would expand a shorter portion (roughly half the distance covered by the previous project) of the road that would be located entirely within Bexar County and increase the number of lanes to four without requiring new right-of-way and would require the submission of a capacity categorical exclusion document.

The requestor states that she is being requested to manage the production of the environmental documents related to the new projects, conduct field investigations on environmental impacts, write the environmental documentation, and serve as the agent applying for a Section 10 endangered species permit. The requestor also states that, because the previous projects in which the requestor was involved were rejected, and because TxDOT prohibits reliance on any previous TxDOT effort, there are no reports or studies on which the requestor worked, oversaw, or supervised that would be used as a basis for or incorporated into work that the requestor is being asked to perform for the firm.

Based on the facts stated in the request, the requestor asks whether the revolving door provision in section 572.054(b) of the Government Code would prohibit the requestor from working on the environmental documentation related to the new road projects. Section 572.054(b) provides:

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> "Particular matter" means "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). "Participated" means "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 question is whether either of the two road projects that TxDOT approved after the requestor's employment with TxDOT was terminated constitutes a particular matter in which she participated as a former employee of TxDOT.

The two road projects for which the requestor now seeks to perform services for the firm concern the same roads that were the subject of the environmental assessment documents that she oversaw as a TxDOT employee. To an extent, the projects for SH 211 are related to each other, just as the projects for FM 1957 are related. However, we have said that the term "particular matter" refers to a particular proceeding rather than to a particular subject matter or to a specific contract, not to contracts generally. [Ethics Advisory Opinion Nos. 419 \(1999\), 353 \(1996\)](#). The fact that two matters relate to the same general subject matter of a proposed agency project does not make them part of the same particular matter. *See, e.g., Ethics Advisory Opinion Nos. 345, 324 (1996)* (determining that certification of a groundwater monitoring system to federal government and application for state permit for landfill involving same monitoring system are separate matters). The revolving door provision also does not prohibit former state employees from working in subject areas or for employers with which they became familiar in the course of their state employment. [Ethics Advisory Opinion No. 364 \(1997\)](#).<sup>2</sup>

Under the facts presented by the requestor, and assuming that the requestor's services performed for the firm would not use or incorporate any of the reports or studies on which she worked, oversaw, or supervised while she was an employee of TxDOT, neither of the road projects would constitute a particular matter in which she participated as an employee of the agency. Therefore, the revolving door provision would not prohibit the requestor from performing the services as described in the request.<sup>3</sup>

## SUMMARY

Section 572.054(b) of the Government Code does not prohibit a former employee of the Texas Department of Transportation from performing services related to road projects as described in this opinion.

---

<sup>1</sup> This applies to a former 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. Gov't Code § 572.054(c)(2).

<sup>2</sup> *See also, Ethics Advisory Opinion No. 397 (1998)* (stating that 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).

<sup>3</sup> The requestor also asks whether the revolving door provision would apply under these facts if the requestor is an employee of an engineering firm that is conducting work on behalf of a county. Section 572.054(b) only applies to a representation of a person or compensation received for services rendered on behalf of a person, and "person" does not include a governmental body. *See Ethics Advisory Opinion No. 232 (1994)*. If a former employee represents a governmental body or renders services on behalf of a governmental body, then the revolving door provision would not apply. Based on the facts provided in this request, it appears that the former employee is representing a private contractor and not a governmental body. However, as we stated above, section 572.054(b) of the Government Code does not prohibit a former TxDOT employee from performing services related to road projects as described in this opinion because neither of the road projects would constitute a particular matter in which the former employee participated as an employee of TxDOT.