



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 568

September 1, 2021

ISSUES

Whether Section 572.069 of the Texas Government Code would prohibit a former employee of a state agency from providing certain services to a company that bid on procurements from the agency. (AOR-648)

SUMMARY

Section 572.069 of the Texas Government Code would not prohibit a former state employee from accepting employment to provide the described services to a company that bid on procurements from the agency because he did not participate in the procurements. The former state employee may obtain employment with the company before the second anniversary of the date on which the employee's service or employment with the state agency ceased.

FACTS

The requestor asks whether he may now accept employment at "Company X." He retired from employment at a state agency¹ on May 31, 2020. During his period of employment at the state agency, Company X bid on three "Shared Technology Services procurements." The requestor did not serve "on the procurement team," but "was a member of the agency leadership team that was informed by the procurement team with regard to project status." Within the structure of the state agency, "contracts were handled entirely and completely" by another organization, which was led by a peer who reported to the same director as the requestor.

In the prospective employment with Company X, the requestor would be "advising state governments in North America (USA and Canada) on how to successfully adopt cloud services into their IT modernization strategy." He states, "As a condition of my proposed employment with Company X, I would not participate in any manner with work associated with the State of Texas until May 2022, two years after my retirement[.]"

ANALYSIS

Legal Standard:

Section 572.069 of the Government Code states:

A former state officer or employee of a state agency who during the period of state service or employment participated on behalf of a state agency in a procurement or contract negotiation involving a person may not accept employment from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.

Tex. Gov't Code § 572.069.

Section 572.069 does not define the term “participated.” However, the term is defined in Section 572.054 of the Government Code, a companion revolving door law, as “to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.” Tex. Gov't Code § 572.054(h)(1). We rely on the meaning of “participated” in Section 572.054 when construing Section 572.069, and we therefore apply that meaning here. *See* Tex. Gov't Code § 311.011(b) (“Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.”).

The former state employee did not participate on behalf of a state agency in a procurement or contract negotiation involving company X:

The first question is whether the former state employee participated on behalf of a state agency in a procurement or contract negotiation involving the prospective employer. We have held that a requestor participated in a procurement on behalf of a state agency by scoring and evaluating bid proposals for a contract to provide information technology services, even though the requestor did not participate any further in the request for proposal or participate in negotiation with vendors or the vendor selection. Tex. Ethics Comm'n Op. No. 545 (2017).

Here, during his period of employment with the state agency, the former state employee was informed of the status of the three procurements with Company X because of his position as a member of the agency leadership team, but he states that he did nothing additional with the procurements in that role. Having been informed of the status of the procurements is distinguishable from having taken action “through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.” Tex. Gov't Code § 572.054(h)(1). Indeed, it appears that only staff in another organization within the state agency took any action on the three procurements.

In our opinion, the former state employee did not participate in a procurement on behalf of a state agency merely by keeping informed of the status of agency procurements. Accordingly, Section 572.069 of the Government Code would not prohibit the former state employee from accepting employment from the company that bid on the procurements before the second anniversary of the date the employee's employment with the state agency ceased.