



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 572

February 25, 2022

ISSUE

Whether section 572.069 of the Government Code prohibits a former employee of a regulatory agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during her state service. (AOR-658)

SUMMARY

No. Affiliates are different persons for purposes of Chapter 572 of the Government Code. Therefore, we conclude that section 572.069 of the Government Code does not prohibit a former employee of a regulatory agency from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the employee participated during her state service.

FACTS

The requestor asks whether section 572.069 of the Texas Government Code would prohibit her from accepting prospective employment. She is currently employed with the Texas Health and Human Services Commission (“HHSC”) as an attorney assigned to provide legal advice for managed care and other Medicaid contracts and procurements. In connection with her state employment, the requestor has worked on procurements and contracts involving certain corporate subsidiaries of UnitedHealth Group Incorporated (“UGI”). The requestor asks the Commission whether she may accept employment from a different subsidiary of UGI that was not involved in any procurement or contract negotiation in which she participated.

ANALYSIS

Section 572.069 prohibits former state officers and employees who participated on behalf of a state agency in a procurement or contract negotiation from accepting employment from any person involved in that procurement or contract negotiation for two years after ceasing their state service. Tex. Gov’t Code § 572.069. The requestor acknowledges that she participated on behalf of HHSC in procurements and contract negotiations with certain corporate subsidiaries of UGI. But she says that she did not participate in any procurement or contract negotiation involving the

particular UGI subsidiary that seeks to employ her. Therefore, the question presented by this request is whether a “person,” for purposes of section 572.069, includes corporate affiliates.

Chapter 572 of the Government Code defines “person” as “an individual or business entity” and defines “business entity” as “any entity recognized by law through which business for profit is conducted, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust.” Tex. Gov’t Code §§ 572.002(2), 572.002(7). The requestor states that each of the UGI subsidiaries she has been involved with during her state service have their own taxpayer identification numbers and their own separate contracts with HHSC. Furthermore, she states that the obligations and benefits of those contracts do not transfer to other corporate subsidiaries of UGI. Information available from the Texas Secretary of State confirms that each subsidiary identified by the requestor is a separately-organized legal entity.

The Texas Business Organizations Code defines “affiliate” as “a *person* who controls, is controlled by, or is under common control with *another person*.” *Id.* at § 1.002(1) (emphasis added). In other words, two affiliates are, by definition, distinct “persons,” at least for purposes of the Business Organizations Code. Other state laws expressly define “person” to include affiliates within their scope. For example, section 59.002 of the Texas Business and Commerce Code, which addresses claims involving contracts for the construction or repair of improvements to real property, provides its own definition of “person” that “includes a parent, subsidiary, affiliated entity, joint venture partner, or owner of the person.” Tex. Bus. & Comm. Code § 59.002(b).

In the absence of any similar statutory language in Chapter 572 of the Government Code, we must conclude the law does not prohibit an individual from accepting employment from an affiliate of a person that was involved in procurements or contract negotiations in which the requestor participated during her state service. Consequently, the requestor may accept the prospective employment.