



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 573

February 25, 2022

ISSUE

Whether the laws under the Commission's jurisdiction prohibit a former employee of a state agency from accepting employment at another state agency. (AOR-661)

SUMMARY

Nothing in Chapter 572 of the Government Code prohibits the requestor from accepting the employment with another state agency. All three revolving door provisions prohibit former state officers and employees from representing, accepting employment, or receiving compensation from certain "person[s]." As defined by Chapter 572, a state agency is not a "person," so none of the revolving door provisions restrict former state officers and employees from accepting employment with another state agency.

Provisions of chapter 39 of the Penal Code prohibit public servants from misusing government property, services, personnel, and information to obtain a personal benefit. However, the requestor has not presented any facts that would indicate the requisite intent to find a violation.

FACTS

The requestor asks whether any of the revolving door provisions in Chapter 572 of the Texas Government Code would prohibit her from accepting employment with a state agency. He is currently an employee at a state agency at which he manages federally funded disaster recovery grants, including several "interagency grants" that involve other state agencies. The requestor played a significant role in identifying, recommending, scoping, and negotiating these grants. He asks the Commission whether he may accept employment from another state agency if the position is funded by one of the grants he currently manages. If the answer to this first question is no, the requestor asks whether he may accept employment at one of the state agencies with which he manages a grant if the position is not funded by one of the grants he manages.

ANALYSIS

Chapter 572 of the Texas Government Code contains three different "revolving door" provisions. *See* Tex. Gov't Code §§ 572.054(a), 572.054(b), and 572.069. Section 572.054(a) prohibits certain former senior agency officials and employees from appearing before their former agency

“on behalf of any person in connection with any matter on which the person seeks official action” for two years. Tex. Gov’t Code § 572.054(a). Section 572.054(b) prohibits former state officers and employees of regulatory agencies from receiving any 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.” Tex. Gov’t Code § 572.054(b). And section 572.069 prohibits all 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. *Id.*

In short, all three provisions prohibit former state officers and employees from representing, accepting employment, or receiving compensation from certain “person[s].” 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 plain language of Chapter 572 thus excludes state agencies from the definition of “person.” A state agency is not an “individual,” nor is it an entity recognized by law through which “business for profit” is conducted. *Id.* Consequently, none of the revolving door provisions in Chapter 572 prohibit the requestor from accepting employment at another state agency. This is true even if the position he accepts is funded by one of the grants he manages.

Section 39.06(b) of the Penal Code prohibits public servants from using nonpublic official information “for a nongovernmental purpose,” including a personal benefit. *Id.* Similarly, section 39.02 of the Penal Code prohibits public servants from misusing government property, services, personnel, or any other thing of value belonging to the government to obtain a personal benefit. *Id.* However, the requestor has not presented any facts that would indicate the requisite intent to find a violation of either of these laws. On the contrary, the requestor states that he “could better serve the state” by moving to another state agency where he would have a broader role in coordinating and administering government services. Without any evidence that the requestor misused government property or information to benefit his *personal* interests—rather than the public interest—we must conclude that there is no violation of the Penal Code.