



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 577

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September 29, 2022

### ISSUE

*Whether an employee of a university system participates in a procurement or contract negotiation for the purposes of Section 572.069 of the Government Code when the employee informally recommends an attorney to provide outside legal services to the university system decision makers, but has no involvement in the formal selection process or negotiating the terms of the contract. (AOR 665.)*

### SUMMARY

An employee of a university system does not “participate” in a procurement or contract negotiation by informally recommending a lawyer for outside legal services and would not be prohibited from accepting employment from the lawyer’s law firm before the second anniversary of the date the employee’s outside counsel contract was signed.

### FACTS

The requestor is employed by the University of Texas Systems (UTS). She asks whether she may accept employment with a law firm that provides outside legal counsel to the same division of the UT Systems where she is currently employed.

The requestor, knowing that UTS needed outside counsel for real estate work, sent an email to an assistant general counsel informing him that an attorney they had both previously worked with at another public university was now in private practice. The requestor told the assistant general counsel that the hourly rates charged by the former colleague’s firm were in line with UTS’s parameters and the former colleague was “smart.”

The requestor set up a Zoom call to reintroduce the former colleague to the assistant general counsel. Following that call, the former colleague submitted an application and was ultimately approved as outside counsel of UTS.

The requestor was not involved in the contract solicitation, negotiating the terms of the contract, or approving the application.

The outside counsel contract between UTS and the former colleague's law firm was signed with a commencement date of October 1, 2021.

## ANALYSIS

Section 572.069 prohibits former state officers and employees who participated on behalf of a state agency in a procurement or contract negotiation with a person from accepting 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from that person before the second anniversary of the date the contract is signed or the procurement is terminated or withdrawn.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.

The question here is whether the requestor "participated" in a procurement or negotiation for outside legal counsel by speaking positively of an attorney's work and setting up an informal reintroduction when the attorney's law firm had not yet applied to provide outside counsel services.

Section 572.069 does not define the term "participated." However, the term is defined in 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). The Commission applies the definition of "participated" in Section 572.054 when construing Section 572.069. Tex. Ethics Comm'n Op. No. 568 (*citing* 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.")).

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). We have also held that a high-ranking employee of a state agency did not participate in a procurement when he was informed of the status of the procurement but had no other involvement.

In our opinion, the former state employee did not participate in a procurement on behalf of a state agency merely by introducing a prospective applicant to another employee of UTS. Here, the requestor had no role in setting the contract requirements, evaluating the applicant, negotiating the terms, or ultimately selecting the applicant. The requestor had no authority to make a selection or direct the agency decision makers in their selection of outside counsel. The requestor also does not serve in a supervisory or management role over any of the employees involved in the selection process. The requestor only stated a former colleague was "smart" and set up a meeting with a person who was part of the UTS evaluation team.

We think merely commenting on a former colleague's intelligence before that person has even applied to be approved as outside counsel is too *de minimis* of an action to be considered "making a recommendation" or "giving advice" in a procurement. This is especially true when, as is the case here, the employee making the introduction has no authority over the selection

process or the employees making the selection. Therefore, we do not believe the requestor “participated” in the procurement with the law firm.

Accordingly, Section 572.069 of the Government Code would not prohibit the former state employee from accepting employment from the law firm before the second anniversary of the date the employee’s outside counsel contract was signed.