



# TEXAS ETHICS COMMISSION



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## ETHICS ADVISORY OPINION NO. 595

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*September 27, 2023*

### ISSUE

Whether the Section 572.069 revolving door prohibition prevents a state university employee, who operates a business outside of his university employment, from bidding on behalf of his business on a procurement issued by the university. (AOR-691).

### SUMMARY

Section 572.069 of the Government Code applies only to a “former state officer or employee of a state agency.” The requestor is a current employee of the university and therefore is not subject to 572.069. However, the requestor should take care not to violate the standards of conduct for state employees listed in Section 572.051 of the Government Code or Chapter 39 of the Penal Code.

### FACTS

The requestor has been employed in various capacities at the same university where he currently works as a senior advisor. The requestor has reduced his work hours for the university to three quarters time in order to pursue outside consulting projects. The outside projects are undertaken by a consulting firm where he is the Managing Principal and Executive Director. The consulting firm specializes in executive searches for universities. The requestor states he disclosed his outside employment and consulting services to his university in accordance with university policy.

The state university that employs the requestor has submitted a request for quotes (RFQ) for consulting services to help select the next university president. The requestor would like to submit a bid to provide consulting services through his consulting firm.

The requestor further states that he did not influence or work on the RFQ and would not have any involvement with scoring the bid. The facts submitted with the request do not indicate whether advising or participating in the executive search fits within his job description or expectations as a senior advisor employed by the university.

## ANALYSIS

Chapter 572 of the Government Code contain three revolving door provisions—all of which apply to a former officer or employee of a state agency. Tex. Gov't Code §§ 572.054(a), 572.054(b), 572.069.

The requestor asks whether the revolving door provision that bars a “former state officer or employee of a state agency” who participated in a procurement involving a person from accepting employment for two years after the contract is signed or the procurement is terminated prevents him from bidding on the RFQ through his consulting firm and, if awarded, working on the project. *Id.* § 572.069. It does not.

In this case, the requestor has not yet exited the revolving door. As a current employee, the requestor is not a “former officer or employee” of a state agency. Tex. Gov't Code § 572.069. Therefore, Section 572.069 would not prohibit the requestor from bidding on, and if granted, receiving compensation for working on the RFQ while he maintains employment at the university.

Although the law cited in the request does not apply to the requestor because he plans on maintaining employment at the university, other Government Code and Penal Code provisions do apply to the conduct of current state employees.

Section 572.051 of the Government Code lists certain conduct in which a state officer or employee “should not” engage. The “should not” include “accept[ing] other employment or engag[ing] in a business or professional activity that the officer or employee might reasonably expect would require or induce the officer or employee to disclose confidential information acquired by reason of the official position; . . .[or] accept[ing] other employment or compensation that could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of the officer's or employee's official duties.” Tex. Gov't Code § 572.051(a)(2), (3). Both of these provisions are potentially implicated by a senior advisor employed by a university bidding on and ultimately receiving additional compensation for providing “consulting” services to the same university.

Each state agency is also required to adopt a written ethics policy consistent with Section 572.051 and violating that policy or Section 572.051 may subject the state employee to termination. *Id.* § 572.051(b), (c).

The Texas Penal Code also makes it a criminal offense for a public servant to use or disclose nonpublic information that he has access to by means of his office or employment with an intent to gain a benefit, such as winning a competitive contract. Tex. Penal Code § 39.06(b).

The effect of an advisory opinion is to provide a defense to prosecution or civil penalty if reasonably relied upon. *Id.* § 571.097(a). Based on the limited facts presented we cannot offer that protection to the requestor with respect to Chapter 572 of the Government Code and Chapter 39 of the Penal Code.