



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 621

March 11, 2025

ISSUE

At what moment does a particular permitting or enforcement matter come within the "official responsibility" of a TCEQ commissioner for purposes of the Section 572.054(b) revolving door prohibition? Does a TCEQ commissioner "participate" in all matters for which a TCEQ investigation was conducted or an application/registration was received before the commissioner left office or only those matters that were presented to the commissioners for consideration? (AOR-721)

SUMMARY

Since a TCEQ commissioner does not exercise authority in an enforcement or permitting matter before it is presented to the commissioners for a decision with notice to the relevant parties, a TCEQ commissioner does not "participate" in such a matter until it is presented to the commissioners for their consideration.

FACTS

The requestor is a former commissioner of the Texas Commission on Environmental Quality (TCEQ).

TCEQ commissioners have a general duty of agency oversight, including its permitting and enforcement programs. However, the requestor states, commissioners have no duty with respect to a particular matter until it is presented to the commission for its consideration with notice and opportunity for each party to participate. In fact, because of the legal restrictions that prohibit commissioner involvement in enforcement and permitting matters unless all parties have notice and an opportunity to be heard, TCEQ commissioners have a legal duty not to participate in contested matters until that time.

The requestor states that while the agency's executive director likely has official responsibility for an enforcement matter upon staff's initial investigation for an enforcement matter and for a permitting matter when a registration or application is received, the commissioners, mindful of the *ex parte* prohibitions and as a matter of practice, carefully avoid communication about (much less any responsibility for) these matters until they are presented to the commission for a decision with notice and opportunity for each party to participate.

ANALYSIS

A former state officer or employee of a regulatory agency may not represent or receive compensation for work on behalf of any person regarding a particular matter in which the former officer or employee participated during state service “either through personal involvement or because the case or proceeding was a matter within the officer’s or employee’s official responsibility.” Tex. Gov’t Code § 572.054(b).

To comply with laws governing contested administrative cases and ethical standards governing the conduct of lawyers, TCEQ commissioners are restricted from participating in—through action or oversight—particular permitting and enforcement matters until they are presented to the commissioners on notice and opportunity for each party to participate. Tex. Gov’t Code § 2001.061; Texas Disciplinary Rule 3.05; Professional Ethics Committee Opinion No. 587 (May 2009). As such, Section 572.054(b) does not apply to all enforcement or permitting matters for which an investigation was conducted or an application/registration was received before the commissioner left office. Instead, the provision applies only to matters that were submitted to the commissioners for consideration before the commissioner left office.