



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 627

June 12, 2025

ISSUE

Whether a former employee of a state regulatory agency who worked on a schematic for a particular construction project may receive compensation from a private employer for services related construction management of the project. (AOR-730)

SUMMARY

The requestor's limited work on the schematic is too attenuated from the contract for the construction management of the project to say that he "participated" in the construction management contract as a state employee. Therefore, he may receive compensation for services rendered on behalf of his private employer for the construction management contract

FACTS

The requestor is a former Texas Department of Transportation (TxDOT) employee who now works at a private company that is interested in submitting a bid on a TxDOT project.

While employed by TxDOT, the requestor was involved with review of the schematic of a particular construction project. The requestor left TxDOT before the completion of the schematic and the development of the design plans. The proposal will be released for public bids in September 2025, more than three years after the requestor left TxDOT.

A schematic is "a general plan of a project, location of the roadway, bridges, utilities, etc.," according to the requestor. Construction design plans, on the other hand, are more detailed, to "show how the project is to be constructed, what type of pavement for roadway/s, the size, number, and kind of bridge elements, traffic control, phasing, etc."

As a TxDOT employee, the requestor's involvement in the project was limited to a "review of the schematic prior to finalization." He was in no way involved with the review or development of the design plans.

The creation of the design plans are typically put to bid as a separate contract from construction management contract to avoid potential conflict with the construction management team. We assume that the design plans for this project were created pursuant to a separate contract from the construction management contract.

The requestor's current employer is planning on submitting a bid for the construction management contract and would like to list the requestor on the proposal. If awarded the contract, the requestor anticipates his "role during construction management would be constructability review, which will be primarily the bridges but will look at the entire project and how all disciplines (roadway, drainage, traffic control, bridges, phasing, etc.) relate and support each other."

ANALYSIS

The question presented is whether, under the Section 572.054(b) revolving door prohibition, the requestor may work for a private company on a construction management contract when he previously worked on the schematic for same project as a state employee.

The "revolving door" prohibition states:

A former state officer or employee of a regulatory agency who ceases service or employment with that agency on or after January 1, 1992, may not represent any person or receive 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, 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). In short, this law prohibits a former state employee from working on a "matter" the former state employee "participated" in as an employee of the state agency.

"Participated" means "to have taken action as an officer or employee through decision, *approval*, *disapproval*, *recommendation*, *giving advice*, investigation, or similar action." *Id.* § 572.054(h)(1) (emphasis added).

"Particular matter" means "a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding." *Id.* § 572.054(h)(2).

A "particular matter" refers to a specific proceeding, including a contract, involving the exercise of discretion by an agency. *See, e.g.,* Tex. Ethics Comm'n Op. No. 397 (1998). "In circumstances in which two matters are interdependent pieces of a larger project, an agency employee's 'participation' in one of the matters would also constitute 'participation' in the other matter if the employee's work on the first matter is being reviewed or analyzed in the second matter." *Id.*; *see also* Tex. Ethics Comm'n Op. No. 337 (1996) (concluding that a redetermination proceeding regarding the results of a sales tax audit by the Comptroller would be a continuation of the audit because the redetermination proceeding was an appeal of the findings reached in the audit.). *But see* Tex. Ethics Comm'n Op. No. 477 (2007) ("bidding on a contract that utilizes the standard

specifications the employee helped develop is not part of the same matter as the matter of writing the standard specifications.”).

Ethics Advisory Opinion No. 507 involved a similar fact pattern to this request. In EAO 507, the requestor participated in the creation of a schematic that was used to prepare detailed construction plans for a highway project. But he did not participate in the creation of the detailed construction plans. The project in EAO 507 was split into at least two separate contracts: one contract to come develop detailed design plans and provide construction services, and second contract to manage the construction as a general engineering consultant. The requestor in EAO 507 was involved in preparing request for proposals for the detailed design plans by helping to ensure the RPF documents matched the schematic. He was not directly involved in the second RPF.

We concluded that the two projects were “interdependent pieces of a larger project” to build a highway. Tex. Ethics Comm’n Op. No. 507 (2012). Therefore, if the employee’s involvement in the schematic “included any participation in creating the essential components of the final highway design” then “any subsequent review or analysis of those provisions” would be prohibited participation in the same particular matter. *Id.*

Just as in EAO 507, this requestor was involved in the creation of a schematic but not the detailed design plans. However, unlike the employee in EAO 507, this requestor did not participate in creating or reviewing any RFP documents.

We think the requestor’s limited review of the schematic is too attenuated from the RFP for a construction management project to say that he “participated” in the construction management contract as a state employee. The schematic that existed when the requestor left state employment was subject to further work, review, finalization, and then transformed into a detailed design plan in a separate contract. The RFP for the construction management contract will be prepared and published more than three years after the requestor left state employment.

Given the requestor’s limited involvement in the unfinished schematic, an intervening contract that transformed the schematic in design plans, and the remoteness in time between the requestor’s work and the actual bid for the contract, the requestor did not “participate” in the contract for the construction management contract. Therefore, he may receive compensation for services rendered on behalf of his private employer for the construction management contract.