



TEXAS ETHICS COMMISSION



ETHICS ADVISORY OPINION NO. 637

December 10, 2025

ISSUE

Whether representing a party before the State Office of Administrative Hearings (SOAH) in a contested matter against a state agency of previous employment constitutes an appearance before that state agency for the purposes of Texas Government Code § 572.054(a). (AOR-739)

SUMMARY

A former commissioner may not argue a contested matter referred by the TCEQ to SOAH because the final decision maker in the matter is the TCEQ.

FACTS

The requestor is a former commissioner of the Texas Commission on Environmental Quality (TCEQ), who wishes to represent a party before the SOAH on a contested matter referred to SOAH by TCEQ.

TCEQ routinely refers contested matters to SOAH for adjudicative hearings, where employees of the TCEQ typically represent the agency. A SOAH administrative law judge returns a proposal for decision (PFD) to the TCEQ and the TCEQ's commissioners consider the proposal before taking final action. The TCEQ is the ultimate decider in the case and may depart from SOAH's proposal. Additionally, a party may file exceptions to the PFD that it wishes the TCEQ to consider and may file a motion for rehearing asking for the TCEQ to reconsider its ultimate decision.

The requestor stated that any negotiation that would take place prior to the appearance before SOAH would take place between a permit applicant and protestant, they would not involve the TCEQ.

ANALYSIS

A former member of the governing body of a regulatory agency may not make any communication to or appearance before an officer or employee of the agency in which the member served before the second anniversary of the date the member ceased to be a member of the governing body if the communication or appearance is made with the intent to influence and on behalf of any person in connection with any matter on which the person seeks official action. Tex. Gov't Code § 572.054(a).

The requestor contends that by representing a party before SOAH on a matter referred by TCEQ, the attorney is not seeking official action from the TCEQ or attempting to influence the TCEQ with respect to an official action.

TEC has previously found that the revolving door restrictions do not extend to communications or services directed to any agency other than the one with which the former commissioner, executive director, or employee was connected. *See* Tex. Ethics Comm'n Op. Nos. 232 (1994), 246 (1995), and 292 (1995).

However, Section 572.054(a) prohibits communications with intent to influence and on behalf of any person in connection with any matter on which the person seeks official action. Therefore, the requestor would be barred from any communication with an employee of the TCEQ as counsel in a contested matter for two years after the date they ceased to be a commission member.

Given that the TCEQ is the final decider in the contested matter, any argument made at SOAH is fundamentally an attempt to influence the decisions of the TCEQ. In effect, SOAH develops a factual record and makes recommendations for TCEQ regarding findings of facts and conclusions of law. It is up to TCEQ to accept or reject SOAH's conclusions. Parties typically also have an opportunity to influence the referring agency, in this case TCEQ, on what findings of facts and conclusions of law to accept. Therefore, the requestor would be unable to represent a party before SOAH on a matter referred by TCEQ.

Appearing before SOAH on a matter referred by another agency would not violate the revolving door provision, as SOAH is not the agency at issue.