

Revolving Door

A GUIDE TO THE REVOLVING DOOR PROVISIONS

THIS GUIDE IS FOR former board members and former upper-level employees of regulatory agencies in the executive branch of state government. The term "regulatory agency" is defined in a way that includes most executive branch state agencies. The two revolving door provisions apply to different groups of former officers and employees.

The revolving door provisions in chapter 572 of the Government Code do not apply to former officers or employees of the legislative or judicial branches of state government.

Caveat: *Other law "that restricts representation of a person before a particular state agency by a former state officer or employee of that agency" prevails over section 572.054. For example, a former employee of the Public Utility Commission is not subject to the revolving door provisions in section 572.054 because the Public Utilities Regulatory Act contains a specific revolving door provision that applies to former employees of the Public Utility Commission.*

The First Revolving Door Rule

Two-year Prohibition Applicable to Former Board Members and Executive Directors

The first revolving door rule applies to all former board members and former executive heads of regulatory agencies. For two years after a board member or executive head leaves a regulatory agency, he or she *may not* appear before or communicate with officers or

employees of the agency with the intent to influence the board on behalf of any person in connection with any matter on which the person seeks official action.

The law is not an absolute prohibition on communications to an agency by a former board member or former executive head of the agency. *The restriction applies only to communications and appearances intended to influence agency action.* If, for example, a current board member calls a former board member to get information about past board activities, the former board member is free to provide information—as long as the former board member does not try to influence the actions of the current board.

The restriction applies even if a former board member or executive head is communicating on his or her own behalf with the intent to influence agency action, subject to any constitutional due process right to be heard by the agency.

The Second Revolving Door Rule

Continual Prohibition Applicable to Former Board Members and Upper-level Employees

The second revolving door rule deals with work on specific "matters," and it applies to all former officers and certain former employees of regulatory agencies.

Former Officers. The provision applies to a former "officer" of a regulatory agency. Board members of state agencies are officers. Also, an individual elected or appointed as the

head of an agency that does not have a board is an officer. For example, the Agriculture Commissioner and the Insurance Commissioner are state officers.

Former Employees Paid At or Above Certain Level. The provision applies to a former employee of a regulatory agency whose ending pay was at or above the amount prescribed for step 1, salary group A17, of the state position classification salary schedule. (The 2007 General Appropriations Act prescribed the minimum annual salary for salary group A17 to be \$36,043 for fiscal year 2008 and \$36,764 for fiscal year 2009.) A former employee who received that amount or more at the time of leaving state employment is subject to the second revolving door rule, regardless of whether the former employee held a classified position or a position exempt from the classification schedule.

An officer or employee subject to the second revolving door prohibition may *never* represent a person or receive compensation for services rendered on behalf of any person regarding a "particular matter" in which he or she "participated" while serving with the agency, either through personal involvement, or because the matter was within his or her official responsibility. In this context, "participated" means to have taken action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.

The most common question raised about the second revolving door rule is whether proposed future employment would involve work on a "particular matter" that a person participated in as a state officer or employee. A "particular matter" is defined narrowly to

mean something quite specific, such as an investigation, application, contract, rulemaking or other administrative proceeding.

This means a person subject to the second revolving door prohibition may work on matters similar to matters he or she worked on as a state employee, but not on exactly the same matters. For example, a former employee of a regulatory agency who worked on Permit Application X at the agency could not leave the agency and work on Permit Application X on behalf of the applicant. The former employee could, however, work on Permit Application Z, even if Permit Application Z involved issues similar to the issues raised in connection with Permit Application X.

Representation Of Nonprofit Organizations Or Governmental Bodies

Both revolving door provisions apply to activity on behalf of a "person." Under the revolving door law, a "person" is an individual or business entity. It does not include a nonprofit organization or governmental body.

Penalties

Violation of either of the revolving door provisions is a Class A misdemeanor.

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LEAVING A STATE AGENCY?

*A Texas Ethics Commission Guide To The
Revolving Door Provisions In Chapter 572
Of The Texas Government Code*