

Revolving Door

A GUIDE TO THE REVOLVING DOOR PROVISIONS

THIS GUIDE IS FOR former board members, officers, and employees of certain agencies in the executive branch of state government. Chapter 572 of the Government Code contains three revolving door provisions. Each provision applies to different groups of former members, officers, and employees.

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

Caveat: *Other law “that restricts the representation of a person before a particular state agency by a former state officer or employee of that agency” prevails over the second and third provisions in section 572.054. For example, a former employee of the Public Utility Commission is not subject to the second or third revolving door provisions 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 State Officers and Employees

The first revolving door rule applies to all former state officers and employees of a state agency. If a state officer or employee of a state agency participated on behalf of the agency in a procurement or contract negotiation involving any person, then he or she *may not* accept employment from that person for two years after the date he or she leaves the agency. This

revolving door rule applies only to a state officer or employee whose service or employment ceases on or after September 1, 2015.

The Second Revolving Door Rule

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

The second 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.

This restriction applies regardless of who initiated the contact and even if a former board member or executive head is communicating on their own behalf with the intent to influence agency action, subject to any constitutional due process right to be heard by the agency.

The Third Revolving Door Rule

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

The third revolving door rule deals with work on specific “matters” and 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. 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 2015 General Appropriations Act prescribed the minimum annual salary for salary group A17 as \$36,976 for fiscal years 2016 and 2017.) A former employee who received that amount or more at the time of leaving state employment is subject to the third 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 third 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 third 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 third 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

All of the revolving door laws apply to activity on behalf of a “person.” Under the revolving door laws, a “person” is an individual or business entity. It does not include a nonprofit

organization or governmental body.

Penalties

A violation of the second or third revolving door provisions is a Class A misdemeanor. The Texas Ethics Commission may assess a civil penalty for a violation of any of the three revolving door laws.

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If you have questions, please contact the Ethics Commission at (512) 463-5800.

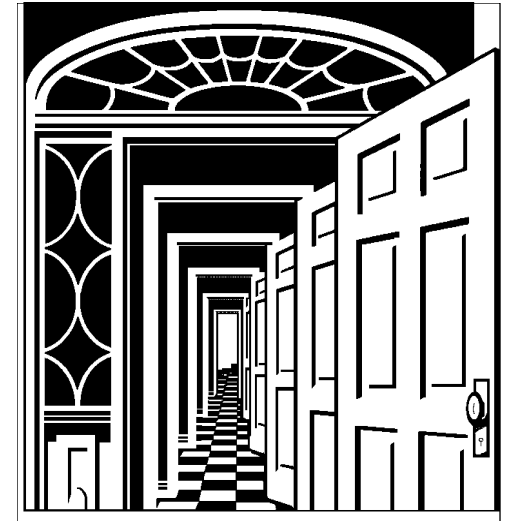
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LEAVING A STATE AGENCY?

*A Texas Ethics Commission Guide to the
Revolving Door Provisions in Chapter 572 of
the Texas Government Code*