

Guidance Regarding Post-Employment Restrictions
December 2006

Questions continue to arise regarding restrictions that might apply to contractors and consultants that hire former and retired Texas Department of Transportation (TxDOT) employees to work on TxDOT projects. State law imposes various restrictions on state employees who go to work in the private sector.

Previously, an internal memo issued by Charles W. Heald, P.E. dated December 1, 2000, has been referenced as guidance on this topic and is still correct. The following information parallels the latest memo from Michael Behrens on this topic which was intended as an update with further clarification, but the law has not changed.

Government Code §572.054, the *Texas Revolving door Law*, applies to all employees, including retirees, whose last salary was at or above the amount paid to step 1 of salary group A17 or B9. These former employees are prohibited from ever receiving compensation in the private sector for services regarding any “particular matter” in which the employees “participated” at TxDOT. A “particular matter” includes a specific investigation, application, request for a ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, arrest, or judicial or other proceeding. For the department’s purposes, a transportation project would be a single “particular matter” from the first planning stages through the completion of construction. The term “participated” means “to have given action as an officer or employee through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.” An employee is considered to have participated in a matter whether the employee was personally involved or the matter was within the employee’s official responsibility. This is a lifetime or perpetual prohibition.

Government Code §2252.901, regarding Contracts with Former or Retired Agency Employees, prohibits a state agency from entering into certain types of contracts, including professional services and consulting contracts, with any former agency employee for one year after the employee leaves the payroll. There is no prohibition on entering into a contract with a firm that merely employs a former employee or subcontracts with a former employee, as long as that person does not perform any services on a project he or she worked on while employed at TxDOT (as prohibited by Government Code §572.054 as previously described).

Examples:

- ✓ A former employee whose last salary was at or above an A17 or B9 level cannot receive payment directly or indirectly from TxDOT for working under a contract that involves a particular matter in which the former employee participated while employed at TxDOT. This is a lifetime prohibition.
- ✓ TxDOT can enter into a contract with a firm that employs a former employee even if the employee will perform services on a specific matter the employee worked on at TxDOT as long as the employee’s last TxDOT salary was below that paid at step 1, Group A17 or B9.

- ✓ TxDOT can enter into a contract with a firm that employs a recently-terminated TxDOT employee as long the former employee will not perform any work on the projects he or she worked on at TxDOT.
- ✓ No former employee can legally sign a consulting or professional services contract with TxDOT within twelve months after he or she leaves the department, regardless of the employee's former TxDOT job duties or salary level.
- ✓ TxDOT cannot enter into a contrast with a firm owned in whole or in part by any former employee until one year after his or her termination from TxDOT.
- ✓ The law regarding contracts with former or retired employees does not prohibit former or retired employees from participating in a contract entered into with a local government, state agency or university.
- ✓ The Revolving Door Law does not apply to former employees who go to work in the public sector or for nonprofit entities.

TxDOT staff should contact the Office of General Counsel at (512) 463-8630 with any questions. Former or retired employees may contact the Texas Ethics Commission on Revolving Door Issues.