



Down the Rabbit Hole of Revolving Door Restrictions 2024 PEPS Conference

Amy Owens, TxDOT Senior General Counsel



December 11, 2024

Presentation Topics

1

Provisions/Rules and How They Apply

2

First Revolving Door Rule

3

Second Revolving Door Rule

4

Third Revolving Door Rule

5

Requesting a Determination

6

Consequences for Violations

7

Resources

8

Questions & Discussion

Exploring Revolving Door / Post-Employment Restrictions



TxDOT employees considering employment with a company that does business with TxDOT are responsible for complying with TxDOT revolving door rules and state law.

All revolving door laws apply to activity on behalf of a “person.”

A “person” is an individual or business entity and does NOT include a nonprofit organization or governmental body.

Texas Government Code §572.002(2).



First Revolving Door Rule



First Revolving Door Rule

Two-year prohibition from accepting employment if you **participated** in the procurement or contract negotiation with the firm.

Definitions

- **Participation** is an active part in the original procurement or contract with the prime or approving or performing a step that is **materially relevant**.
- An action is **materially relevant** if the action provides an opportunity to steer a contract toward a particular vendor or involves the negotiation of price or contract terms with a vendor or the approval of negotiated prices or terms.

Handling administrative matters and performing ministerial duties are not materially relevant. Texas Administrative Code §1.6(g)

Scenarios

Is that prohibited?

Scenario #1



Alice, Bridge Division Director, was approached by Tweedle D&D, a company who has contracted with TxDOT for engineering services, to work for them. Alice doesn't remember directly working on anything with Tweedle D&D but does recall a February 2023 contract that the Chief Engineer signed off on; Alice initialed the Business Case Memo for the contract. Alice swears she will not work on any projects that involve TxDOT if she takes the job with Tweedle D&D.

Is this prohibited?

Scenario #2

March Hare has always loved working for TxDOT but feels like he is ready for a new challenge. Recently he prepared an RFP and helped with score sheets, and scheduled interviews on a procurement that Tiger Lily and Petunia were competing for. Petunia was awarded the contract. Tiger Lily asked March Hare to come work for them.

Is this prohibited?



TxDOT may not enter into an employment contract, professional services contract, or consulting services contract with a former or retired employee of TxDOT before the first anniversary of the last date on which the individual was employed by TxDOT, if appropriated money will be used to make payments under the contract. This does NOT prohibit TxDOT from entering into a contract with a firm or business entity that employs the former employee.

Texas Government Code §2252.901



Scenario #3



Dodo Bird retired from the TxDOT Maritime Division in August 2024. He recently started a consulting firm utilized by the private-sector freight community. TxDOT would like to hire him as a consulting witness for an upcoming trial.

Is this prohibited?

Second Revolving Door Rule

Second Revolving Door Rule

Two-year prohibition
applicable to former board
members and Executive
Directors





Former board members or executive directors are prohibited from making any communication to or appearances before an officer or employee of the agency before the second anniversary of separation. Texas Government Code §572.054(a)



This applies to communications made *with the intent to influence a board member or employees* on matters which the person seeks official action. It applies regardless of who initiated the contact. It applies even if the former employee is communicating on his “own behalf” rather than his new company.

Texas Administrative Rule §1.6(b)(1) slightly expanded the Second Revolving Door Rule

- A former employee who was at a DE/DD level or above is prohibited from soliciting business or attempted to influence a decision of the commission or TxDOT on behalf of his newly employed entity within a year of separation.
- An exemption to this rule is made if the position was designated as an interim position. Tex. Admin. Rule §1.6(c)

Scenarios

Is that prohibited?

Scenario #4



Lewis Carroll, former E.D. of TxDOT, left in July 2024 to work for Cheshire Cat, LLC. Prior to the October 2024 Commission meeting, Lewis had a friendly coffee with a Commissioner. He later attended and appeared at the meeting, requesting the Commission add a Cheshire-Cat-connected project back into the UTP.

Is this prohibited?

Scenario #5



Ed Walrus, former D.E. of Lufkin, left TxDOT to work for Spades, Inc. Three months after he left TxDOT, he set up lunch meetings with old co-workers, encouraging them to market for his new firm.

Is this prohibited?

Third Revolving Door Rule



Third Revolving Door Rule

Continual prohibition applicable to all former employees A17 or higher from representing a person regarding a “particular matter” in which they “participated” while serving TxDOT.

Definitions

- **Participated** - to have taken action through decision, approval, disapproval, recommendation, giving advice, investigation, or similar action.
- **Particular matter** - specific investigation, application, contract, project, or rulemaking.

It does not preclude someone from working on similar types of matters or from using general knowledge and experience gained at TxDOT.

It does not prohibit working in subject areas with which they become familiar in the course of state employment.

Example - TxDOT employee working on Permit Application X cannot leave to go work on Permit Application X with a private firm; however, could work on Permit Application Z, even if there are similar issues within X.

TxDOT looks at these very case specific and look to the specific project.

Scenarios

Is that prohibited?

Scenario #6

W. Rabbit, a former TxDOT employee whose last salary was \$40,000, chaired a committee that wrote the "700 Items-Maintenance" portion of the Standards Specifications for Construction and Maintenance of Highways, Streets and Bridges Manual ("700 Specs"); he also sat in several meetings and gave recommendations in the early stages of CSJ 1234. Rabbit is now working for Too Late, Inc. as a project lead and is preparing a bid on a contract that utilizes the 700 Specs for the construction of CSJ 1234.

Is this prohibited?





Scenario #7

Alice was a TxDOT environmental manager and project manager for several roads in Wonderland county. Alice oversaw the environmental assessment for a four-lane SH99 to connect two separate segments of pre-existing SH99. The environmental assessment was submitted to and subsequently rejected by TxDOT and FHWA. Alice now works for an engineering firm, Caterpillar, Inc. Caterpillar was hired by a private contractor to fulfill obligations to the County who will construct SH99 on behalf of TxDOT.

Can Alice manage the production of the environmental documents and conduct field investigations on environmental impacts?

Scenario #8

Hearts was formerly a TxDOT project manager and served on the consultant selection committee for the Border Transportation Master Plan (BTMP 2021). He has not been employed with TxDOT for over 3 years and never signed a contract or WA while at TxDOT. He now works for Red Cards, Inc. who is preparing to bid on the current BTMP 2026 being solicited. Red Cards will place Hearts as the task lead?

Is this prohibited?



Requesting a Determination

A for-profit entity or former employee may request from TxDOT a determination of whether an interaction would constitute a violation of revolving door laws or rules.



Requests must be made in writing and contain a concise explanation of the relevant facts.



GCD must be consulted before PEPS/TxDOT responds to the requests.



TxDOT will issue a written determination in response to a valid request made.



One can also request a determination from the Texas Ethics Commission.

Consequences for Violations



- Class A misdemeanor (for revolving Door 2 and 3 violations)
- Texas Ethics Commission may assess civil penalties for violations of any revolving door laws
- TxDOT Compliance Division could investigate which could lead to sanctions, including a debarment

Resources

Resources

43 § TAC 1.6, Conflicts of Interest

Texas Government Code §572.069; §572.054; §2252.901

Texas Ethics Commission, A Guide to the Revolving Door Provisions

HR Manual Chapter 8, Section 2; TxDOT Employee Conduct Handbook

TxDOT Compliance website

PEPS form request

Amy Kovar Owens

Senior General Counsel

 Amy.owens@txdot.gov

 512-463-7421

