



**THE ATTORNEY GENERAL
OF TEXAS**

October 11, 1989

**JIM MATTOX
ATTORNEY GENERAL**

Honorable Erwin W. Barton
Chairman
House Human Services Committee
P. O. Box 2910
Austin, Texas 78769

LO-89-83

Dear Representative Barton:

You ask about Rider No. 53 to the current appropriation for the Department of Human Services. General Appropriations Act, Acts 1989, 71st Leg., ch. 1263, at 5481. That rider provides:

- a. This section applies to any contract or agreement to provide goods, services (including professional services covered by Section 69 of Article V of this Act), or products in which:
 - 1) a former board member or employee of the Department of Human Services, while serving as a board member or employee, participated substantially in the development of the program for which the goods, services, or products are to be provided and is an officer, director, employee, or consultant employed by the provider of the goods, services, or products; or
 - 2) a former board member or employee holds a substantial interest in the business entity that will provide the goods, services, or products, regardless of whether such entity is a sole proprietorship, partnership, corporation, or other business entity.

- 3) For the purposes of this provision, the term 'former board member or employee' shall apply to any board member or employee whose service or last day of duty with the department ended September 1, 1987 or thereafter.
- b. The department may not expend funds appropriated by this Act for a contract or agreement covered by this section unless at least 30 days before executing the contract or agreement the department gives written notice to the Legislative Budget Board and the Governor's Office of Budget and Planning. During the 30-day period after the date on which the notice is received, the Legislative Budget Board may disapprove the expenditure of appropriated funds for the contract or agreement. If the agency does not receive notice from the Legislative Budget Board that the expenditure is disapproved, then the agency may proceed with the contract or agreement.

You ask whether that rider prohibits a person who was employed by the Department of Human Services as "a program specialist for the Nursing Facility Utilization Review/Utilization Control" from accepting employment in the nursing home industry.

Rider no. 53 does not prevent former employees of the Department of Human Services from accepting employment in the private sector. Rather, it provides that before the department may enter into a contract in which a former department employee has an interest, the department must notify the Legislative Budget Board of the proposed contract. The Legislative Budget Board then has 30 days to disapprove the contract.¹ That restriction may, of course, work as a disincentive for certain employers to hire former

1. Rider no. 53 raises several constitutional issues, including whether giving the Legislative Budget Board authority to disapprove agency contracts violates the separation of powers doctrine embodied in article II, section 1, of the Texas Constitution. You do not ask about the constitutionality of rider no. 53; therefore, we do not address that issue.

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department employees. It does not, however, prevent former department employees from accepting employment with an entity that contracts with the department.

Further, whether rider no. 53 would apply to any particular proposed contract would be a question of fact that could not be resolved in the opinion process.

Very truly yours,



Sarah Woelk, Chief
Letter Opinion Section
Opinion Committee

SW/lcd

APPROVED BY: Rick Gilpin, Chairman
Opinion Committee

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