

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

May 1, 1985

Russ Sanford  
R. E. Sanford & Associates  
9100 Billy Mitchell Blvd.  
Roseville, CA 95678

Re: Your Request for Advice  
Our File No. A-85-080

Dear Mr. Sanford:

Mr. William Briner, Director of the Department of Parks and Recreation, has forwarded us your letter requesting advice regarding your duties under Government Code Sections 87400, et seq. Based on the letters I have received, the facts are as follows:

You were previously employed as Deputy Director of the Division of Off-Highway Motor Vehicle Recreation in the Department of Parks and Recreation. You have recently left state service and are conducting business in the private sector. Your business activities concern recreational land-use and legislative advocacy.

You have asked whether your business activities may include involvement in the Off-Highway Motor Vehicle Program. You have not provided any specific information about the matters you participated in as Deputy Director, and you have not asked specifically whether you may represent a particular client with regard to a particular matter. Without specific facts, I can give you only general advice about your responsibilities; however, please feel free to request additional advice about specific fact situations.

### ANALYSIS

The Division of Off-Highway Motor Vehicle Recreation is responsible for planning, acquisition, development, construction, and conservation of lands and facilities for off-highway motor vehicle recreation, and for the management, maintenance, administration, and operation of those lands and facilities. Public Resources Code Section 5090.32. The

Division is required to, among other things implement policies established by the Off-Highway Motor Vehicle Recreation Commission and prepare plans for lands in, or proposed to be included in, the State Vehicular Recreation Area and Trail System. Public Resources Code Section 5090.33. The Division also makes grants to cities, counties, and special districts for planning, acquisition, development, construction, maintenance, and operation of lands and facilities for off-highway motor vehicles. Public Resources Code Section 5090.50.

The Political Reform Act<sup>1/</sup> contains provisions governing the employment of former state employees relative to certain proceedings in which they participated while employees of the state. Sections 87400, et seq. Section 87401 provides as follows:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof:

(a) By making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if;

(b) The State of California is a party or has a direct and substantial interest; and

(c) If the proceeding is one in which the former state administrative official participated.

Section 87402 further provides that:

No former state administrative official, after the termination of his or her employment or term of office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

Russ Sanford  
May 1, 1985  
Page 3

official would be prohibited from appearing under Section 87401.

Section 87400(b) defines "state administrative official" as:

... every ... officer, employee ... of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical ... capacity.

Section 87400 (a) defines "state administrative agency" to include "every state office, department, division...."

Section 87400(c) defines "judicial, quasi-judicial or other proceeding" to include:

... any proceeding, application, request for a ruling or other determination, contract, claim, controversy, ... or other particular matter involving a specific party or parties in any ... state administrative agency....

Section 87400(d) defines the term "participated" as used in Section 87401(c) to mean:

... to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee....

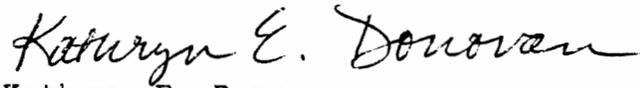
Applying the foregoing statutory provisions, it is clear that you were employed by a "state administrative agency." Therefore, you may not, for compensation, represent any person before any court or state administrative agency in connection with any proceeding involving specific parties in which you participated when employed by the Division of Off-Highway Motor Vehicle Recreation. However, you may represent an organization in connection with a proceeding in which you participated as Deputy Director if you receive no compensation for your services. In response to your specific question, if you are the paid Executive Director of an organization, you are prohibited from representing that organization before any court or state administrative agency in connection with any proceeding involving specific parties in which you participated as Deputy

Russ Sanford  
May 1, 1985  
Page 4

Director. This prohibition applies even if you and the organization agree that your compensation as Executive Director does not include compensation for the activities involved in representing the organization before the state administrative agency.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan  
Counsel  
Legal Division

KED:plh  
cc: William S. Briner

# R. E. Sanford & Associates

13 March 1985

Mr. William S. Briner, Director  
Department of Parks & Recreation  
State of California  
P. O. Box 2390  
Sacramento, CA 95811

Directors Office

MAR 14 1985

DEPT. PARKS & RECREATION

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RECREATIONAL LAND-USE CONSULTING  
LEGISLATIVE ADVOCACY  
RECREATIONAL INSURANCE  
BUSINESS MANAGEMENT

Dear Mr. Briner:

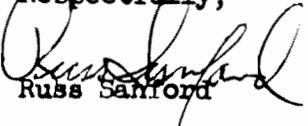
In August of last year, I received a letter dated 21 August, 1984, signed by Patricia Shaw of your department, enclosing a copy of Government Code Section 87400. Her letter stated in part, "The "Revolving Door Prohibition" states that persons leaving a position as a state administrative official are prohibited from being compensated by a private employer for work performed in connection with a proceeding involving the State of California if the former official participated in the proceeding when he or she was in service to the State".

In that my previous experience and work with the Off Highway Motor Vehicle Program was the basic qualification for my appointment as Deputy Director in charge of the OHMVR Program, I have been concerned with the legal ramifications of returning to my previous employment and the extent to which I can become involved in the present and future OHMVR Program. I would appreciate your response with respect to the following:

1. It would appear that I can become involved in any proceeding(s) of the OHMV Program wherein I am not being compensated by a private employer for such involvement. Further, it would appear that even though I was compensated for activities performed as the Executive Director of an organization, I could still perform lobbying and representation activities for that same organization as long as those services were being offered and performed fee gratis. Is this also the department's interpretation of Section 87400?
2. Not all, but the majority of projects with which the OHMVR Division is now concerned were projects under consideration during my tenure as the head of that division. However, the 'go/no go' decisions with respect to those projects were rendered not by myself, but by the OHMVR Commission. If, in the opinion of the department, there are projects with which I cannot become legally involved while being compensated by any employer, I would appreciate being provided with a list of such projects.

I have re-opened my personal business involved with recreational land-use and legislative advocacy and will appreciate your early response to the foregoing.

Respectfully,

  
Russ Sanford

Telephone (916) 771-0353

cc: OHMVR Commissioners

(016) 447-2268

MAR 29 1985

Mr. Russ Sanford  
2100 Billy Mitchell Boulevard  
Roseville, CA 95678

Dear Mr. Sanford:

The California Fair Political Practices Commission should be approached for its comments regarding any particular endeavor which may fall under Government Code Section 87101. A copy of your letter, together with a copy of this reply, is being sent to the Commission with my request that the Commission furnish any general guidelines it has prepared.

With respect to the two numbered paragraphs in your letter of March 12:

1. If a former State official was a paid executive director of a private organization, it would appear that Government Code Section 87101 prohibits that former official from appearing before a State administrative agency, its officers or employees, or any court concerning a proceeding in which the former State official had rendered advice on a substantial basis, investigated or used confidential information received while he was an official, provided a formal written recommendation, approved, disapproved, or furnished a decision concerning the subject matter.
2. All of the projects which fall under the prohibition of Government Code Section 87101 are those in which you "participated" as "participated" is defined in Section 87100(d). The Department cannot furnish a list of these projects since only you yourself know whether you "participated" with regard to a particular project.

Sincerely,

ORIGINAL SIGNED BY

Wm. S. Briner

Wm. S. Briner  
Director

J-2610X

WSB:FCB

# Memorandum

Date : MAR 29 1985

MAR 2 10 52 AM '85

To : Mr. John Kaplinger  
Executive Director for  
Political Practices Commission  
Mail Code D-23

From : Department of Parks and Recreation

Subject: Request for Clarification  
Prohibition of Government Code Section 87401

This Department has received the attached letter regarding the responsibilities of a former State official. Mr. Sanford was formerly the Deputy Director for Off-Highway Motor Vehicle Recreation Division, appointed pursuant to Public Resources Code Section 5090.31.

If you have any comments or can supply any further information for Mr. Sanford, please do so.

  
Wm. S. Briner  
Director

J-3641X

Attachment