



California Fair Political Practices Commission

July 3, 1986

Dr. Arnold M. Mayer
351 Rio Del Oro Lane
Sacramento, CA 95825

Re: Your Request For Advice
Our File No. I-86-187

Dear Dr. Mayer:

Thank you for your letter requesting advice regarding your duties under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTION

Are you prohibited under the Political Reform Act from acting, either as an employee or as an independent contractor, on behalf of Delta Dental Plan of California (Delta) by virtue of the fact that you are a former employee of the State Department of Health Services (DHS)?

CONCLUSION

You are not prohibited under the Political Reform Act from becoming an employee or independent contractor of Delta. You may be precluded from representing, advising, counseling, consulting or assisting Delta on certain "proceedings" with which you were involved while employed by DHS. You should also consider whether the provisions of Section 1090, et seq., or Public Contract Code Section 10410, et seq., preclude you from becoming an employee or independent contractor of Delta.

ANALYSIS

You recently terminated your employment with DHS. In recent years, your duties with DHS included handling second-level appeals of providers and occasionally auditing Delta in its capacity as fiscal intermediary of the Denti-Cal

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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program. During 1979-81, you were involved with the Surveillance/Utilization and Review Unit investigating overutilization, fraud and abuse of the Denti-Cal program.

You have been offered a position with Delta Dental handling the Surveillance/Utilization and Review function. This function was delegated to them under the present contract between the State and Delta. Other positions that are available to you are as an in-house dental consultant adjudicating new claims, or as a regional consultant examining patients for second opinions.

You indicated in our July 1 telephone conversation that you were not engaged in any of the negotiations, transactions, planning, arrangements, or any part of the decisionmaking process relevant to the contract between the State and Delta.

Before considering the issues which this factual situation raises with regard to the Political Reform Act, it should be noted that other provisions of law including Section 1090, et seq., and Public Contract Code Section 10410, et seq., may preclude you from becoming an employee or independent contractor of Delta. The Commission does not have authority to provide advice regarding these statutes. Accordingly, we recommend that you seek further legal advice regarding this factual situation.

With regard to the Political Reform Act, Section 87401 provides:

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 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 both of the following apply:

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

(b) The proceeding is one in which the former state administrative official participated.

Section 87401.

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Section 87402 provides:

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 official would be prohibited from appearing under Section 87401.

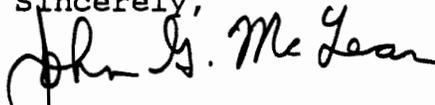
Section 87402.

Your employment with DHS makes you a state administrative official who is subject to the restrictions of Sections 87401 and 87402. Section 87400(b). Accordingly, you may not represent, aid, advise, counsel or assist in representing Delta in any "proceeding" in which you participated as a DHS employee.

A "proceeding" for purposes of Sections 87401 and 87402 is "any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other matter involving a specific party or parties in any court or state administrative agency." Section 87400(c). Therefore, for example, if a provider's appeal or a specific audit determination on which you worked as a DHS employee is still pending, you may not advise or assist Delta or any other person in connection with that proceeding. However, you are not prohibited from working on any new proceeding, even if it affects specific parties involved in other proceedings in which you participated as a DHS employee.

Because of the general nature of your question, we cannot provide you with more specific advice at this time. If you would like to discuss a more specific matter, please do not hesitate to contact us at (916) 322-5901.

Sincerely,



John G. McLean
Counsel
Legal Division

JGM:plh

F P P C DR. ARNOLD M. MAYER
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June 3rd, 1986

Fair Political Practices Commission
428 J Street Suite 800
P.O. Box 807
Sacramento, California 95804.

Dear Sirs:—

I recently terminated as a Dental Consultant with the Department of Health Services of the State of California. My primary duties were handling second level appeals of providers and occasionally auditing the fiscal intermediary of the Dent-Cal program, Delta Dental, for compliance with the scope and level of the program. Prior to the above, 1979-1981, I was involved with the Surveillance/Utilization and Review unit of the Dent-Cal program investigating overutilization, fraud and abuse of the program.

DR. ARNOLD M. MAYER

by providers.

I have been offered a position with Delta Dental handling the S/R function which was delegated to them under the present contract between the State and Delta. Other positions that are available to me are being an in-house dental consultant adjudicating day to day new claims from providers and lastly, acting as a regional consultant examining patients for second opinions in which instance I would be a private contractor and paid per examination.

I would appreciate a reply, in writing, to make certain that I am not in violation of Government Code 87400 for both myself and possibly Delta Dental if they so chose to hire me in any of the above functions.

351 Rio Del Oro Lane
Sacramento, California 95825

Sincerely
Dr. Arnold M. Mayer



California Fair Political Practices Commission

June 4, 1986

Dr. Arnold M. Mayer
351 Rio Del Oro Lane
Sacramento, CA 95825

Re: 86-187

Dear Dr. Mayer:

Your letter requesting advice under the Political Reform Act has been received on June 3, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "John G. McLean".

John G. McLean
Counsel
Legal Division

JGM:plh