



# California Fair Political Practices Commission

October 10, 1989

Rodney J. Blonien  
Whitman & Ransom  
1121 L Street, Suite 510  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-89-463

Dear Mr. Blonien:

You have requested advice on your own behalf regarding the application of the "revolving door" provisions of the Political Reform Act (the "Act").<sup>1</sup>

## QUESTION

As a former administrative official of an agency which oversees the Department of Corrections, may you represent Fischbach and Moore Electronics Company relating to work performed on prison projects involving contracts awarded before or after you left state service?

## CONCLUSION

You may not represent the company on claims arising from contracts awarded prior to your departure from the agency if performance had begun prior to your departure. You may represent the company on claims arising from contracts awarded and performed after you left state service. You may also represent the company on performance claims arising from contracts awarded prior to your departure provided that performance of the contract did not commence until after your departure and provided that the claims do not require interpretation of contract language drafted specifically for that contract. The Commission may review the revolving door provisions of the Act in the near future, which may

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

result in a change in this advice. However, until any change occurs, you may rely upon the advice rendered in this letter.

FACTS

You are a former undersecretary of the Youth and Adult Correctional Agency ("YACA"), the agency that oversees the Department of Corrections. You are now in private practice and have been asked to represent Fischbach and Moore Electronics Company ("Fischbach") on claims arising from its work on prison projects at Corcoran, Pelican Bay (Del Norte), the cogeneration facility at Otay Mesa and the cogeneration facility at Avenal.

According to your letter, you participated in the groundbreaking for the Corcoran and Pelican Bay prisons just prior to leaving office. You did not engage in any substantive meetings relating to problems on the downline construction of these facilities. With respect to the facilities at Otay Mesa and Avenal, you do not recall having participated in any substantive meetings relating to the cogeneration facility, the award of the contracts for those facilities, or problems relating to the construction of the cogeneration. You would like to represent Fischbach on matters involving these projects.

At your suggestion, information was obtained from the Department of Corrections regarding the chronology of events involving the contracts in question. That information indicates that contracts with Fischbach as contractor or subcontractor relating to the facilities in question were awarded as follows:

<u>Site</u>	<u>Contract No.</u>	<u>Date</u>
Avenal	C86.1011	August 1, 1986
Otay Mesa	C86.1011	August 1, 1986
Otay Mesa	C85.546.1.12	July 17, 1986
Otay Mesa	C85.546.2.07	March 10, 1986
Corcoran	C87.1012	September 14, 1987
Corcoran	C86.1078	February 11, 1987
Corcoran	C86.1098	March 26, 1987
Pelican Bay	C87.1037	March 10, 1988

In our conversation of September 21, 1989, you indicated that performance of the contracts awarded on August 1, 1986, began in late 1986 or early 1987, prior to the time that you left the agency. Performance on the contracts awarded in February and March of 1987 did not begin until after you left the agency. The contracts awarded in September of 1987 and March of 1988 were awarded after you left YACA.

ANALYSIS

Sections 87401 and 87402 restrict the activities of former state administrative officials. These "revolving door" provisions

prohibit any former state administrative official from representing, aiding, advising, counseling, consulting, or assisting in representing any person, for compensation, in connection with any judicial, quasi-judicial or other proceedings in which he or she participated as a state employee.

We have previously advised you that the revolving door provisions of the Act apply to you as a former state administrative official and that a contract is a "proceeding" under the Act. (Blonien Advice Letter No. A-89-034, copy enclosed.) We have also advised you that a contract performance may be not be segmented into stages of performance. To attempt to segment a contract by stages of performance ignores the inside knowledge and experience gained in monitoring one stage which would inherently transfer to another. (Blonien, supra, at p. 5.)

Finally, we advised you that participation may be direct or inferred by virtue of your supervisory status. As stated previously, the duty statement provided for you by YACA indicates that you had overall responsibility for the decision-making aspects of the prison construction program. (Blonien, supra, at p. 4.) For example, the duty statement which appears to cover the period from September of 1986 until your departure from the State, includes the following description of your duties as undersecretary:

Overall responsibility for the decision-making aspects of the Prison Construction Program including site selection, institution capacity and construction planning.

Applying the above principals to the current situation, we can make certain determinations. As a former state administrative official, you may not represent Fischbach with respect to claims arising from the contracts awarded in August of 1986, since they were awarded prior to your departure and performance began prior to your departure. You did not provide information regarding the commencement of performance of the contracts awarded in July and March of 1986. Assuming that performance commenced prior to the time that you left state service, you are also prohibited from representing Fischbach with respect to these contracts. With respect to the contracts awarded in September of 1987 and March of 1988, if the application and award process began after your departure, you may clearly represent Fischbach.

Finally, we must determine whether you may represent Fischbach in regard to claims arising under contracts which were awarded prior to your departure, but on which performance began after you left YACA. We have previously advised that a contract may be divided between the application and award phase and the performance phase. (Sanford Advice Letter, No. A-85-182; Chacon Advice Letter, No. A-87-197, copies enclosed.) Under this test, you would be permitted to represent Fischbach with respect to performance claims arising under the contracts, provided that performance began after you left YACA, notwithstanding the fact

that the contracts were awarded prior to your departure. This, however, presupposes that there is no dispute as to the meaning of the terms used in the contract other than standard contract terms used by the department in all its construction contracts. If a claim arising under a contract involves interpretation of contract language drafted specifically for that contract, the claim could be construed as relating to the application and award phase of the contract.

While this advice is in accord with prior advice letters, we anticipate that the Commission will reconsider this issue in the near future. Such reconsideration may result in a clarification of what constitutes a single proceeding under Section 87400.

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

Sincerely,

Kathryn M. Donovan  
General Counsel



By: Margaret W. Ellison  
Counsel, Legal Division

KED/MWE/aa

Enclosures

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August 8, 1989

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415-323-6686

Margaret W. Ellison, Counsel  
Legal Division  
California Fair Political  
Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95804-0807

Dear Ms. Ellison:

On February 22, 1989, the Fair Political Practices Commission rendered an opinion and disapproved my representing Tutor-Saliba Construction Company relating to claims arising out of work they performed on the California State Prison, at Folsom. In your advice letter you indicated that even though two years had transpired since I left the State, that my frequent meetings with the Department of Corrections in matters relating to construction at Folsom State Prison, precluded my representing Tutor-Saliba.

I have now been requested to represent Fischbach and Moore Electronics Company relating to the work on the following prison projects.

1. Corcoran
2. Pelican Bay (Del Norte)
3. Cogeneration Facility - Otay Mesa
4. Cogeneration Facility - Avenal

Please be advised that I participated in the groundbreaking for the Corcoran and Pelican Bay prisons, just prior to my leaving the State. I did not engage in any substantive meetings relating to problems on the downline construction of either of these facilities. In terms of the Otay Mesa and Avenal facilities, although I participated in numerous meetings relating to those facilities, I do not recall

WHITMAN & RANSOM

Margaret W. Ellison, Counsel  
August 8, 1989  
Page 2

having participated in any substantive meetings relating to the Cogeneration Facility, the award of the contracts for those facilities, or problems relating to the construction of the cogeneration. The problem you foresaw in my representing Tutor-Saliba relating to the earlier advice letter is not present in this situation. Therefore, I respectfully request that you issue an advice letter as soon as possible relating to my ability to represent Fischbach and Moore relating to the above referenced prison projects.

Most cordially,



Rodney J. Blonien of  
Whitman & Ransom

RJB:dg  
MEMO100

89-463

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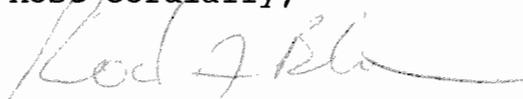
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Whitman & Ransom  
1121 L Street  
Sacramento, CA 95814

Re: Letter No. 89-463

Dear Mr. Blonien:

Your letter requesting advice under the Political Reform Act was received on August 8, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathryn E. Donovan".

Kathryn E. Donovan  
General Counsel

KED:plh