

April 10, 2007

Mr. Daniel Vanderprieem
730 Puerto Place
Hayward, California 94541

**RE: Your Request for Advice
Our File No. A-07-024**

Dear Mr. Vanderprieem:

This letter is in response to your request for advice regarding the post-employment provisions of the Political Reform Act (the "Act").¹ Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090 which prohibits public officials from having an economic interest in their agencies' contracts. You may contact the State Attorney General's Office for questions about Government Code Section 1090.

QUESTION

Having recently left your position as the City of Oakland's Redevelopment Agency Director, are you prohibited by the post-employment provisions of the Political Reform Act from accepting a contract for consulting services during your retirement from a company that is obtaining a loan from the Oakland Redevelopment Agency?

CONCLUSION

The Act's one-year ban on a local official's making an appearance before or communication with his or her former agency to influence legislative or administrative action (Section 87406.3) applies to local elected officials and to chief administrators of cities, counties, and special districts. A redevelopment agency is not a special district and is not included within the scope of Section 87406.3. Thus, the Act's one-year ban for local officials does not apply to you after leaving your position as Director of the Oakland Redevelopment Agency.

¹ Government Code Sections 81000-91014. Commission Regulations appear at title 2, Sections 18109-18997, of the California Code of Regulations.

FACTS

You officially left office March 2, 2007. In November 2006 prior to your decision to retire, a company requested a pre-development loan from the redevelopment agency, a common occurrence. Your department made a positive recommendation on the loan, and the Redevelopment Agency Board (City Council) granted the loan, although the loan agreement had not been executed as of February 7, 2007, and was still being negotiated. You left active employment with the City of Oakland on January 19, 2007, and are no longer going in to work. You were still technically an employee until March 2, 2007, because you were using your vacation leave before retiring.

Since December 2006, you have not had any involvement in the loan agreement being drafted by the City Attorney's office. The company contacted you upon your retirement January 19, 2007, and invited you to submit a proposal to them for consulting services when you were no longer an employee of the City of Oakland or Redevelopment Agency, i.e., after March 2, 2007. None of the loan proceeds from the Redevelopment Agency would be used to pay you for your services. The developer would pay for your services out of their own funds.

ANALYSIS

Local governmental officials who leave governmental service are subject to the Act's one-year ban for local officials in Section 87406.3.² Generally, this restriction prohibits certain former local officials from communicating, for compensation, with his or her former agency for the purpose of influencing any legislative or administrative actions including quasi-legislative and quasi-judicial actions.

Section 87406.3(a) provides:

“(a) A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041³ shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to,

² Local officials leaving government service are also subject to restrictions when negotiating prospective employment. Prior to separation from government service, a public official is prohibited under Section 87407 and Regulation 18747 from making, participating in making, or influencing a “governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.” Because you have already left your position as Director of the City of Oakland's Redevelopment Agency, it is not necessary to address the restrictions on negotiating prospective employment.

³ Under Section 82041 “‘Local government agency’ means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.”

that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative⁴ or legislative⁵ action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.”

The one-year ban of Section 87406.3 applies to certain employees or officers of local governmental agencies including local elected officials, chief administrative officers of counties, city managers, and general managers or chief administrators of special districts. (Section 87406.3(a).)

In addition, Regulation 18746.3(a) states:

“(a) The prohibitions of Government Code section 87406.3 apply to a public official who, on or after July 1, 2006, holds a position as a:

“(1) Local elected official;

“(2) Chief administrative officer of a county;

“(3) City manager, including the chief administrator of a city; or

“(4) General manager or chief administrator of a special district who holds a position with a local government agency as defined by Government Code section 82041, including the general manager or chief administrator of an air pollution control district or air quality management district.”

You recently left the position as Director of the Oakland Redevelopment Agency where you were an employee of the City of Oakland. The Oakland City Council sits as the Board of the Oakland Redevelopment Agency.

As the director of the Oakland Redevelopment Agency, you did not hold a position as chief administrator of a city or county. The question to examine is whether you are covered under the one-year ban for local officials because you were a general manager or chief administrator of a *special district*. (Section 87406.3(a) and Regulation 18746.3(a)(4).)

⁴ Under Section 87406.3(d)(1), “[a]dministrative action’ means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.”

⁵ Under Section 87406.3(d)(2), “[l]egislative action’ means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.”

A special district is defined in Government Code Section 16271(d), in part, as follows:

“(d) ‘Special district’ means any agency of the state for the local performance of governmental or proprietary functions within limited boundaries. ‘Special district’ includes a county service area, a maintenance district or area, an improvement district or improvement zone, or any other zone or area formed for the purpose of designating an area within which a property tax rate will be levied to pay for a service or improvement benefiting that area....”

A special district is a form of local government that can raise revenues to deliver specific public services within defined boundaries. Examples of special districts include water districts, county sanitation districts, hospital districts, fire protection districts, mosquito abatement districts, parks and recreation districts, flood control districts, cemetery districts, etc.

You worked for the Oakland Redevelopment Agency. According to the Community Redevelopment Agencies Annual Report published by the California State Controller’s Office,⁶ community redevelopment funds are used to assist local governments in reconstruction and rehabilitation of those areas in various communities that suffer from unsafe, unfit, deteriorated, and economically dislocated buildings and properties. Under the state Community Redevelopment Law, funds from local property taxes are used to promote the redevelopment of blighted areas.

However, a redevelopment agency is different from a special district. The California Supreme Court has held that a redevelopment agency is not a “special district” within the meaning of Cal. Const., art. XIII A, § 4, which requires a two-thirds vote of the electorate for imposition of special taxes, because a redevelopment agency does not have the power to levy taxes. *Huntington Park Redevelopment Agency v. Martin*, 38 Cal. 3d 100 (1985). The Court observed that redevelopment agencies are not empowered to, and do not in fact, levy property taxes. Instead the county tax collector collects taxes used by redevelopment agencies. *Id.* at 106.

The Special Districts Annual Report, published by the State Controller’s Office, states that “[s]pecial districts are defined as legally constituted governmental entities that are *not* cities, counties, *redevelopment agencies*, or school districts....”⁷ (Emphasis added.) In addition, in discussing special districts, a publication of the Senate Local Government Committee states that “special districts are not redevelopment agencies.”⁸

⁶ Office of the California State Controller, *Community Redevelopment Agencies Annual Report for Fiscal Year ended June 30, 2005*, p. iii (21st ed. 2006).

⁷ Office of the California State Controller, *Special Districts Annual Report for Fiscal Year ended June 30, 2004*, p. iii (54th ed. 2006).

You retired as Director of the City of Oakland Redevelopment Agency. Because you were not a local elected official, a chief administrative officer of a city or county, or a chief administrator of a special district, the Act's one-year ban for local officials in Section 87406.3 does not apply to you.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

By: Hyla P. Wagner
Senior Counsel, Legal Division

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⁸ Kimia Mizany & April Manatt, California State Senate Local Government Committee, *What's So Special About Special Districts? A Citizen's Guide to Special Districts in California*, p. 3 (3rd ed. 2002.)