

May 14, 2012

Rick Kreutzer  
7100 Homewood Drive  
Oakland, CA 94611

Re: Your Request for Advice  
**Our File No. A-12-064**

Dear Dr. Kreutzer:

This letter responds to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the “Act”)<sup>1</sup> and is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTION

Do the Act’s post-governmental employment restrictions prohibit you from accepting employment with a private nonprofit foundation that collaborates and partners with your current state employer on research projects funded solely by grants from other foundations and federal agencies?

### CONCLUSION

No. The Act’s one-year “revolving door” provisions would not prohibit you from representing the foundation in collaborative research projects because such representation would not be made for the purpose of influencing administrative or legislative action, or 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 Act’s permanent ban on “switching sides” would not prohibit you from representing or assisting in representing the foundation in these projects because such representation would not involve a judicial, quasi-judicial or other proceeding.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS

You have been a state employee for 23 years, currently serving as chief of the Division of Environmental and Occupational Disease Control (“ODC”) in the California Department of Public Health (“CDPH”). You have been a designated employee for over a decade and have filed a Form 700 each of those years.

The mission of ODC is to prevent or reduce disease and injury related to environmental and occupational factors, employing a variety of methods to identify and understand health problems relating to exposure to hazards in the workplace or in the environment. ODC tracks and investigates cases of illness and injury to understand contributing factors and develop prevention strategies. ODC shares what it has learned with community members and stakeholders. Its programs also carry out specific activities mandated by the Governor or Legislature.

As Division chief, your duties include providing guidance and supervision of the Division’s Branch chiefs and Assistant Division chief regarding budget, personnel, fiscal requirements and adherence to state policy and rules. You are also charged with ensuring that programs fulfill their missions and mandates in monitoring, accounting for and reporting on program achievements, operations and expenditures. You provide support, mentoring and leadership in developing and maintaining well-trained, competent and effective staff and assure the scientific quality of the work done. You also represent ODC in discussions within CDPH and with the Administration and legislative and local officials.

You have been approached by and are in discussions with Sequoia Foundation (the “Foundation”) that may result in an offer of a position for chief executive officer. The Foundation is a nonprofit organization qualified under Section 501(c)(3) of the Internal Revenue Code.

The Foundation partners with ODC staff in conducting studies and research projects, and developing training programs. Sometimes the Foundation is the sole partner and other times there are additional partners that may include community-based organizations representing a particular cause. In some cases, the Foundation conducts the research project. In other cases, CDPH staff directs the research and the Foundation administers and manages the project. The Foundation has acted as an intermediary between federal agencies that fund research projects and the state. Historically, there has been no other means of securing external federal resources in support of state mandates. The Foundation is not under contract with or a vendor of ODC or CDPH. Neither ODC nor CDPH make any payments to the Foundation. All funding is received from federal or private grants. From time to time, ODC has provided letters of support of a project for which the Foundation is seeking a grant and indicating its intent to participate in the project.

## ANALYSIS

The Act contains two restrictions applicable to private-sector employment by persons who have left state service. A one-year “revolving door” provision bars certain former state employees from communicating, for compensation, with their former agencies for the purpose of influencing certain administrative or legislative actions. (Section 87406; Regulation 18746.1.) A permanent (“lifetime”) ban prohibits a former state employee from “switching sides” to participate, for compensation, in a proceeding involving the State of California if the proceeding is one in which the former state employee participated while employed by the state. (Sections 87401-87402; Regulation 18741.1.)

Also, the Act bars a public official still employed by the state from making, participating in making, or using an official position to influence governmental decisions that have a reasonably foreseeable, material financial effect on the official’s economic interest in a prospective non-governmental employer.

### *The One-Year Ban - “Revolving Door”*

Under Section 87406, for one year after a designated employee leaves his or her agency, the employee may not, for compensation, act as a representative or agent for any person before his or her agency for the purpose of influencing administrative or legislative action, or 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.<sup>2</sup>

“Legislative action” is defined in Section 82037 as the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature, or by either House or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his or her official capacity. The work performed by the Foundation in partnership with ODC does not involve legislative action.

“Administrative action” is defined in section 82002 as the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any “quasi-legislative” proceeding. In determining whether a proceeding is quasi-legislative, a term not defined in the Act, the Commission has considered relevant whether the action taken involved “an orientation towards a future event,” or “rules and regulations which establish standards for future conduct” to which a private party must conform in the future. (*In re Leonard* (1976) 2 FPPC Ops. 54; *Erickson* Advice Letter, No. A-90-537.)

You indicate that the work performed by the Foundation in partnership with ODC consists of conducting studies, research, and administering and managing research projects.

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<sup>2</sup> “Influencing legislative or administrative action” includes influencing by any means, including but not limited to the provision or use of information, statistics, studies, or analyses. (Section 82032.)

These activities are not funded by ODC, nor is there a contract between ODC and the Foundation. From time to time, ODC has provided letters of support of a project for which the Foundation is seeking a grant and indicating its intent to participate in the project. The work you have described does not contemplate the proposal, drafting, developing, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. Accordingly, any future contact you may have with CDPH or ODC as the chief executive officer of the Foundation is not prohibited by the one-year ban.

*The Permanent Ban on "Switching Sides"*

Sections 87401 and 87402 prohibit former state administrative officials, who participated in a judicial, quasi-judicial or other proceeding while employed by a state agency, from being paid to represent or assist in representing another person regarding that same proceeding. Section 87401 specifically 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.)

Section 87400(c) provides that “judicial, quasi-judicial or other proceeding” means any proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties in any court or state administrative agency . . .” (Section 87400(c).) The term includes a proceeding in which state administrative officials participate, but leave state employment before the proceeding concludes.

You indicate that ODC is charged with, among other things, identifying and understanding health problems relating to exposure to workplace and environmental hazards; tracking and investigating cases of illness and injury to understand contributing factors and develop prevention strategy and; conducting studies and research projects. The Foundation partners with ODC to conduct studies, investigations and research to advance these purposes. These activities do not involve a particular matter involving a specific party, and, therefore, do

not involve a “judicial, quasi-judicial or other proceeding.” Accordingly, the permanent ban does not prohibit you from providing the services you have described at the Foundation.

*Duties While Negotiating Prospective Employment*

Section 87407 provides:

“No public official, shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.”

Under subdivision (c) of Regulation 18747, a person is a prospective employer of a public official if the official, either personally or through an agent, is negotiating or has an arrangement concerning prospective employment with that person. Regulation 18747(c) further defines “negotiating” and an “arrangement concerning prospective employment” as follows:

“(1) A public official is ‘negotiating’ employment when he or she interviews or discusses an offer of employment with an employer or his or her agent.

“(2) A public official has an ‘arrangement’ concerning prospective employment when he or she accepts an employer’s offer of employment.

“(3) A public official is not ‘negotiating’ or does not have an ‘arrangement’ concerning prospective employment if he or she rejects or is rejected for employment.”

You state that you have been contacted by the Foundation about potential employment. This would appear to constitute “negotiating” prospective non-governmental employment. The prohibitions of Section 87407 apply to a state employee’s participation, while still employed with the state, in governmental decisions directly related to the party with whom he or she is negotiating such employment. You have not provided any facts from which we can determine whether you, as the head of ODC, make, participate in making, or use your official position to influence, any governmental decisions involving the Foundation. So long as you avoid any role in “making,” “participating in making,” or “using your official position to influence a governmental decision,” you will not be in violation of Section 87407. These terms are broadly defined at Regulations 18702.1 through 18702.4, which can be found on the FPPC website, [www.fppc.ca.gov](http://www.fppc.ca.gov). If you have particular questions regarding the scope of these definitions, or their potential application to specific actions you may be contemplating, you may call our toll-free advice line at 1-866-ASK-FPPC for a consultation over the telephone, during normal business hours Monday through Thursday.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl