

June 5, 2013

Paul Benedetto
9524 Kilcolgan Way
Elk Grove, CA 95758

Re: Your Request for Informal Assistance
Our File No. I-13-073

Dear Mr. Benedetto:

This letter responds to your request for advice regarding the “revolving door” provisions of the Political Reform Act (the “Act”).¹ However, since your questions at this time are general in nature, we are providing informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

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 post-governmental employment laws that may apply including, but not limited to, Public Contract Code Section 10411.

QUESTIONS

1. Is there a prohibition under the one-year revolving door provision that would prohibit you from appearing before state and local agencies and departments that are not under the Technology Agency’s control?
2. Are there information technology procurement restrictions during the one-year revolving door period?
3. Are you barred from lobbying or otherwise seeking to influence government decisions at other state departments, local government, the federal government, and the Governor’s office?

¹ 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.

CONCLUSIONS

1. No. Appearances and communications are prohibited by the one-year ban only if they are (1) before a state agency that you worked for or represented; or (2) before a state agency “which budget, personnel, and other operations” are subject to the control of a state agency you worked for or represented.

2. Yes. Your procurement activity may not include making, for compensation, any formal or informal appearance, or making any oral or written communication for the purpose of influencing any administrative or legislative actions, or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property of the Technology Agency, or affiliated agencies controlled by the Technology agency as discussed below.

3. No. Appearances and communications are prohibited by the one-year ban only if they are (1) before a state agency that you worked for or represented; or (2) before a state agency “which budget, personnel, and other operations” are subject to the control of a state agency you worked for or represented.

FACTS

In your prior letter requesting advice (Our File No. I-13-061), you stated that you are the Undersecretary at the California Technology Agency. You were appointed to this position by Governor Brown in August 2011. You anticipate that you will retire this year and wish to work for a private company in the technology industry after you leave.

In your May 24, 2013, letter you added the following information:

- As the Technology Agency’s Undersecretary over Operations, you have authority over the State’s Data Center and Public Safety Communication office. You also have responsibility over the Professional Development and Digital Literacy and Education Office.
- Your future employment will consist of technology, strategic, procurement and project advisory services to representing companies that do business with the State, federal, and local governments.

ANALYSIS

As discussed in the *Quinlan* Advice Letter, No. I-12-077 (copy provided to you in response to your prior letter), under the Act, public officials who leave state service are subject to two types of post-governmental employment provisions known as the permanent and one-year bans. (See Sections 87401 and 87402; Regulations 18741.1 and 18746.1)

In addition, Section 87407 prohibits certain state and local officials from making, participating in making, or using their official position to influence decisions affecting persons with whom they are negotiating employment or have any arrangement concerning employment. (Regulation 18747.)

Permanent Ban

The “permanent ban” prohibits a former state employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (Sections 87401 and 87402; Regulation 18741.1.) The permanent ban is a lifetime ban. It applies to any formal or informal appearance or any oral or written communication, or aiding, advising, counseling, consulting, or assisting in representing any other person, other than the State of California, in an appearance or communication made with the intent to influence any judicial, quasi-judicial, or other proceeding² in which you participated³ while you served as a state administrative official.

As Undersecretary at the Technology Agency, you are a state employee and will be subject to the permanent ban once you leave state employment. However, you have not identified any specific judicial or quasi-judicial proceeding in which you previously participated (such as an 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). Accordingly, we cannot offer you any additional assistance regarding the permanent ban outside of the general assistance provided above. If you need additional advice regarding the permanent ban and any proceeding in which you previously participated as an employee of the CTA, you should seek additional advice providing the details of the particular proceeding.

One-Year Ban

The “one-year ban” prohibits a former state employee from making, for compensation, any formal or informal appearance, or making any oral or written communication, before his or her former agency for the purpose of influencing any administrative or legislative actions⁴ or any

² “‘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).)

³ An official is considered to have “participated” in a proceeding if he or she took part in the proceeding “personally, and substantially through decision, approval, [*8] disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information . . .” (Section 87400(d).)

⁴ For purposes of Section 87406, the Act provides: “ ‘Administrative action’ means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding . . .” (Section 82002(a).) “ ‘Legislative action’ means the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution,

discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. (See Section 87406; Regulation 18746.1.)

The one-year ban applies to any employee of a state administrative agency who held a position that is designated or should be designated in the agency's conflict-of-interest code. (Section 87406(d)(1); Regulation 18746.1(a)(2).) The ban applies for twelve months from the date the employee permanently leaves state office or employment. While in effect, the one-year ban applies only when a former employee or official is being compensated for his or her appearances or communications before his or her former agency on behalf of any person as an agent, attorney, or representative of that person. (Regulation 18746.1(b)(3) and (4).)

Finally, for purposes of the one-year ban, an official's "former" state agency, includes: (1) any state agency that the public official worked for or represented during the 12 months prior to his or her departure from a state agency; or (2) any state agency "which budget, personnel, and other operations" are subject to the control of a state agency the public official worked for or represented. (Section 87406(d) and Regulation 18746.1(b)(6).)

For example, as undersecretary you have authority over the State's Data Center and Public Safety Communication office. You also have responsibility over the Professional Development and Digital Literacy and Education Office. The one-year ban on appearances will apply to these agencies if their budget, personnel and other operations are subject to the control of the Technology Agency. (*Brown Advice Letter*, No. A-08-062.)

1. Is there a temporary ban to appearing before state and local agencies/departments that are not under the Technology Agency's control?

Appearances and communications are prohibited by the one-year ban only if they are before your "former" state agency as described above.

2. Are there information technology procurement restrictions during the one-year revolving door period?

So long as your procurement activity does not include making, for compensation, any formal or informal appearance, or making any oral or written communication, before your former agency for the purpose of influencing any administrative or legislative actions or any discretionary act 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 will not be triggered.

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 official capacity. 'Legislative action' also means the action of the Governor in approving or vetoing any bill." (Section 82037.)

The one-year ban will prohibit you from making any appearance or communication before the Technology Agency, for compensation on behalf of another, for one year after you leave the agency for the purpose of influencing any discretionary act “involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.” This would include any contracts or negotiations regarding the procurement.

3. Are you barred from lobbying or otherwise seeking to influence government decisions at other state departments, local government, the federal government?

Appearances and communications are prohibited by the one-year ban only if they are before your “former” state agency as described above. If you make an appearance or communication to a state agency that is not your “former” state agency, the one-year ban will not apply.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

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