

July 18, 2013

Mohammad Toutouchian
AECOM
999 W. Town & Country Road
Orange, CA 92868

Re: Your Request for Informal Assistance
Our File No. I-13-101

Dear Mr. Toutouchian:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the “Act”).¹ This letter should not be construed as assistance on any conduct that may have already taken place. (Regulation 18329(b)(8)(A).) In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your questions are general in nature, we are treating your request as one for informal assistance.²

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.

QUESTION

As a former employee of the California Department of Transportation (“Caltrans”), do the Act’s revolving door provisions restrict you from engaging in work on behalf of your new private employer related to existing Caltrans contracts?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

The Act's one-year ban prohibits you from appearing before or communicating with your former state employer on behalf of your new employer for the purpose of influencing any administrative or legislative action and 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. Accordingly, you are prohibited from appearing before or communicating with your former state employer on behalf of your new employer for the purpose of influencing any proceeding involving the amendment or revocation of any of the existing contracts you have identified until September 30, 2013.

To the extent that you did not participate as a state employee in proceedings involving the contracts you have identified in any way, the permanent ban does not apply.

FACTS

You are currently a Senior Construction Manager for AECOM. You stated that you are not an officer, stakeholder, executive, policymaker or owner of AECOM. Your duties/responsibilities at AECOM are:

- Construction inspection
- Administering the construction contract
- Provide Quality Assurance/Quality Control training
- Safety and technical support to existing field & office staff,
- Assisting in project control for invoice process, and
- Other duties

You will not manage any Caltrans project at AECOM which you have managed as a senior transportation engineer with Caltrans, District 7.

You were previously employed by Caltrans as a Senior Transportation Engineer (Acting) working for Caltrans District 7. You officially separated/retired from Caltrans on September 30, 2012.

During your tenure with Caltrans, you worked on various construction contracts in District 7. You stated:

- You did not make or participate in the making of decisions affected the issuance or award of the contracts you now wish to work on (59A0761, 59A0764, 59A550, 59A0743, and 44A0045; District 7 contracts 07A3160, 07A3161, 07A3262 07A3263, and 07A3146; and District 8 contracts 08A2147 and 08A2148).

- You further stated that you were not involved in the negotiations, transactions, planning, arrangements or any part of the decisionmaking process relevant to these contracts while employed with Caltrans.
- Finally you stated that in your position with Caltrans you were not in a policymaking position relevant to any contract nor did you participate in any judicial, quasi-judicial, or other proceedings for above contracts.

ANALYSIS

Under the Act, public officials who leave state service are subject to two types of post-governmental employment provisions known as the one-year ban and the permanent ban. 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. (See Regulation 18747.)³ Colloquially, these provisions are known as the “revolving door” prohibitions.

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 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 holds 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)(4).) According to your supplemental communication of July 17, 2013, your position was designated in the Caltrans code and you were required to file Form 700 on an annual basis.

³ You have already left state employment and are currently working for a private employer. Accordingly, we are not providing advice pertaining to Section 87407 at this time.

⁴ For purposes of Section 87406, the Act defines “administrative action” and “legislative action” as the following: “‘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, 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 ban applies for twelve months from the date the employee permanently leaves state office or employment. Regulation 18746.4(b) provides:

“For purposes of the one-year ban, the date on which an official permanently leaves office or employment is the date on which the official is no longer authorized to perform the duties of that office or employment, and stops performing those duties. A person shall not be deemed to have left office permanently because he or she is on a leave of absence or serves as an intermittent employee. However, a person shall be deemed to have left office permanently if the person merely receives compensation for accrued leave credits.”

Assuming you worked up to September 30, 2012, your one year will run as of September 30, 2013, and the prohibition in Section 87406 will no longer apply.

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).) In contrast to the permanent ban (discussed below), which only applies to certain “judicial or quasi-judicial” proceedings, the one-year ban applies to “any appearance or communication made for the purpose of influencing administrative or legislative 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.” (Regulation 18746.1(b)(5)(C).) An appearance or communication is for the “purpose of influencing” if it is made for the “principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding.” (Regulation 18746.2.) An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding in writing or by electronic transmission, attending a meeting, and delivering or sending any communication. (*Id.*)

Finally, appearances and communications are prohibited only if they are (1) before a state agency that the public official worked for or represented; (2) before a state agency “which budget, personnel, and other operations” are subject to the control of a state agency the public official worked for or represented; or (3) before any state agency subject to the direction and control of the Governor, if the official was a designated employee of the Governor’s office. (Regulation 18746.1(b)(6)(C).)

Accordingly, the one-year ban prohibits you from appearing before or communicating with Caltrans, or any representative of Caltrans, on behalf of AECOM for the purpose of influencing any proceeding involving the amendment or revocation of any of the existing contracts you have identified until September 30, 2013.

Nonetheless, the one-year ban only restricts your activities to the extent that you are making an appearance or communication for the purpose of influencing a legislative or

administrative action, or an 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. Appearances or communications, made as part of “[s]ervices performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement are excluded from the [one-year prohibitions] ... provided the services do not involve the issuance, amendment, awarding, or revocation of any of these actions or proceedings.” (Regulation 18746.1(c); *Quiring* Advice Letter, No. A-03-272; *Hanan* Advice Letter, No. I-00-209.) In administering the contracts, you would not be prohibited from communicating or appearing before Caltrans to report compliance with the terms of an existing contract or to seek clarification of existing contractual terms so long as you are not seeking to modify the terms.

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 applies when an official has permanently left or takes a leave of absence from any particular office or employment. (Regulation 18741.1(a)(1).)

The permanent ban is a lifetime ban and 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 proceeding in which you participated while you served as a state administrative official. “ ‘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).) 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, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information....” (Section 87400(d).)

“The permanent ban does not apply to a ‘new’ proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A ‘new’ proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings.” (*Rist* Advice Letter, No. A-04-187; also see *Donovan* Advice Letter, No. I-03-119.) New contracts with the employee’s former agency in which the former employee did not participate are considered new proceedings. (*Leslie* Advice Letter, No. I-89-649.) A new contract is one that is based on new consideration and new terms, even if it involves the same parties. (*Ferber* Advice Letter, No. I-99-104; *Anderson* Advice Letter, No. A-98-159.) In addition, the application, drafting, and awarding of a contract, license, or approval is considered

to be a proceeding separate from the monitoring and performance of the contract, license, or approval. (*Anderson, supra; Blonien* Advice Letter, No. A-89-463.)

As a former Caltrans employee, you are a former state employee subject to the permanent ban. Thus, you are permanently prohibited from making an appearance or communication, or from assisting any other person in making an appearance or communication, for compensation, for the purpose of influencing any particular proceeding involving specific parties, such as a Caltrans contract, if you previously participated in the proceeding as a state official. You have expressly stated that you did not make or participate in the making of decisions affected the issuance or award of the contracts identified; were not involved in the negotiations, transactions, planning, arrangements or any part of the decisionmaking process relevant to these contracts while employed with Caltrans; were not in a policymaking position relevant to any of these contracts; and did not participate in any judicial, quasi-judicial, or other proceedings for these contracts. To the extent that you did participate as a state employee in proceedings involving the contracts you have identified in any way, the permanent ban does not apply.

If you need additional assistance regarding the permanent ban and any proceeding in which you previously participated as a Caltrans employee, please submit a separate advice request providing the details of the particular proceeding.

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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