

January 14, 2014

Gregory Franklin  
P O Box 1712  
Folsom, CA 95763-1712

Re: Your Request for Informal Assistance  
**Our File No. I-13-150**

Dear Mr. Franklin:

This letter responds to your request for informal assistance regarding the revolving door provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your question is general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

### **QUESTION**

Do the Act’s revolving door provisions restrict you from working with state and local agencies or lobbying agencies other than your former agency upon leaving state service?

### **CONCLUSION**

The Act’s revolving door provisions will apply to you upon leaving state service. However, the Act’s revolving door provisions do not prohibit you from working with state and local agencies or lobbying agencies other than your former agency with some restrictions as described below.

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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.

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

## FACTS

You are currently the Deputy Director of Health Information Technology (HIT) at the California Department of Technology. You are responsible for the review of HIT policy and you liaison with peers in other states. You plan to leave your current position and work in the private sector. Your future employment will consist of health program development, health program advising, health technology evaluation, relationship management, health and information technology procurement advising, and project advisory services representing companies doing/seeking businesses with the State of California, the Federal government, and local government entities.

You would like to know if there are any restrictions under the Act regarding working with state and local agencies or departments based on your current employment and future planned area of focus.

## ANALYSIS

Public officials who leave state service are subject to two types of post-governmental employment restrictions under the Act, colloquially known as the “revolving door” prohibitions. The first is the “permanent ban” provision, which prohibits a former state employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California if the proceeding is one in which the former state employee participated while employed by the state. (See Sections 87401-87402, Regulation 18741.1.) The second is the “one-year ban” provision, which prohibits certain state employees from communicating, for compensation, with their former agency for the purpose of influencing certain administrative or legislative action. (See Section 87406, Regulation 18746.1.) As a former employee of the California Department of Technology, you are subject to both prohibitions.<sup>3</sup>

### I. The Permanent Ban on “Switching Sides”

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. (See Sections 87401-87402; Regulation 18741.1.)

The permanent ban is a lifetime ban and applies to 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

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<sup>3</sup> All public officials, leaving governmental service are also subject to restrictions when negotiating prospective employment. Under Section 87407 and Regulation 18747, prior to separation from government service, a public official is prohibited 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.” In addition, the Act’s conflict-of-interest provisions prohibit an official from making, participating in making, or influencing any governmental decision with a reasonably foreseeable material financial effect on the source of promised income. (See Sections 87100, *et seq.* and Regulations 18700, *et seq.*)

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).) Additionally, 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).)

Furthermore, “[t]he 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; see also *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; see also *Anderson* Advice Letter, No. A-98-159.)

While we have detailed the general provisions of the permanent ban for your review, you have not provided any information as to your proposed participation in any specific proceeding that you will be participating in at your new place of employment that may affect your ability to engage in any of the conduct listed herein. To apply the permanent ban to your situation, you need to determine if any of the actions in which you may engage on behalf of your new employer involve a proceeding in which you participated as an employee of the California Department of Technology. (Regulation 18741.1(a)(4).)

## II. The “One-Year Ban”

The one-year ban prohibits a 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 actions<sup>4</sup> 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.)

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<sup>4</sup> 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 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)(2).) The ban applies for twelve months from the date the employee leaves state office or employment, which is defined as the date the employee permanently leaves his or her governmental agency or takes a leave of absence. (See *Lowry* Advice Letter, No. I-08-053; Regulation 18746.1(b)(1) and (2).)

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, which only applies to "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).)

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. (*Ibid.*)

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 during the twelve months before leaving state office or employment. (Regulation 18746.1(b)(6).)

It is important to note, however, that not all communications are prohibited by the one-year ban. Appearances or communications before a former state agency employer, made as part of "services performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement may be 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(b)(5)(A); *Quiring* Advice Letter, No. A-03-272; *Hanan* Advice Letter, No. I-00-209.)

Additionally, Regulation 18746.2(b)(1)-(4) provides that appearances or communications are not restricted under the one-year ban if an individual:

- (1) Participates as a panelist or formal speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;
- (2) Attends a general informational meeting, seminar, or similar event;
- (3) Requests information concerning any matter of public record; or
- (4) Communicates with the press.

We have also advised that a former agency official may, without violating the one-year ban, draft proposals on a client's behalf to be submitted to the agency so long as the former employee is not identified in connection with the client's efforts to influence administrative action. (*Cook* Advice Letter, No. A-95-321; see also *Harrison* Advice Letter, No. A-92-289.) Similarly, a former agency official may use his or her expertise to advise clients on the procedural requirements, plans or policies of the official's former agency so long as the employee is not identified with the employer's efforts to influence the agency. (*Perry* Advice Letter, No. A-94-004.)

As a former designated employee of the California Department of Technology, you are subject to the one-year ban. Under the one-year ban, you may not represent any person, including your new employer, by appearing before or communicating with the California Department of Technology, or any officer or employee thereof, for the purpose of influencing any administrative or legislative action for one year after you leave state service.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Sukhi K. Brar  
Senior Counsel, Legal Division

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