

September 23, 2014

Megan S. Bazurto  
2372 Kinsella Way,  
Roseville, California 95747

Re: Your Request for Advice  
**Our File No. A-14-169**

Dear Ms. Bazurto:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(c)(4)(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 provides advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) We offer no opinion on the application of laws other than the Political Reform Act, such as the post-employment provisions of Public Contract Code Section 10411 or Government Code Section 1090.<sup>2</sup>

### QUESTION

Now that you have separated from your position at CalTrans, what restrictions do the Act’s revolving door provisions impose on your potential position with a private contractor that contracts with the High Speed Rail Authority?

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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> While the Commission may provide assistance regarding Government Code Section 1090, this section applies only if you participated in making the contract as a state official including any preliminary discussions, negotiations, compromises, reasoning, planning, drawing of plans and specifications, and solicitation for bids. (See *Millbrae Assn. for Residential Survival v. City of Millbrae* (1968) 262 Cal.App.2d 222, 237). If you have previously participated in making a contract and anticipate future employment with the same contractor, you may wish to seek additional advice regarding Section 1090 providing a description of your participating in the making of the contract and your anticipated duties on behalf of the contractor.

## CONCLUSION

After leaving state employment, your future employment activities are restricted by the one-year and permanent bans as discussed below.

## FACTS

You separated from the California Department of Transportation (“CalTrans”) on June 30, 2014, where you were a limited term attorney. Caltrans has a contract with High Speed Rail Authority (“HSR”) for Caltrans to review Resolutions of Necessity prior to their presentation before the Public Works Board for approval for condemnation/eminent domain and for Caltrans to assist with the legal process for condemning properties for the High Speed Rail Project. As a CalTrans employee, you reviewed some of these Resolutions of Necessity for Caltrans. HSR is in great need of assistance in reviewing the Resolutions of Necessity for the High Speed Rail project in making sure that the Resolutions are in compliance with Federal, State, and Local laws.

Because HSR has a great need for your skills, but cannot currently hire you directly, HSR would like one of its current contractors/consultants (Parsons Brinckerhoff) to hire you as an independent consultant to provide guidance to HSR and their Consultants in preparing the Resolutions of Necessity and reviewing the Resolutions of Necessity to make sure that they are in compliance with Federal, State, and Local statutes. Thereafter, the Resolutions of Necessity would be provided to Caltrans to approve or reject. Your contract with Parsons Brinckerhoff would identify HSR as your client.

## 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 and permanent bans. In addition, Section 87407 prohibits certain state and local officials from making, participating in making, or using their official position to influence decisions affecting a perspective employer. (See Regulation 18747.) 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 action<sup>3</sup> or any

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<sup>3</sup> For purposes of Section 87406, the Act defines “administrative action” and “legislative action” as:

“‘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).)

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)(2).)<sup>4</sup> The ban applies for twelve months from the date the employee permanently leaves state office or employment.<sup>5</sup> 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 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 if they are (1) before a state agency that the public official 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 the public official worked for or represented. (Regulation 18746.1(b)(6).)

While you have not indicated whether your position is specifically designated in CalTrans's conflict-of-interest code, as an attorney within the department, we assume that it is or should be. Your post-employment actions are therefore restricted under the one-year ban for 12

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“‘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.)

<sup>4</sup> A governmental employee should be designated in his or her agency's conflict-of-interest code if the employee makes or participates in making governmental decisions that have a reasonably foreseeable material effect on any financial interest. (Section 87302.)

<sup>5</sup> 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. A person shall be deemed to have left office permanently, however, if the person merely receives compensation for accrued leave credits. (Regulation 18746.4(b).)

months from the date you permanently leave CalTrans. As addressed above, the one-year ban applies to 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, the one-year ban prohibits you, for the one-year after leaving CalTrans, from representing any other business or organization in administrative proceedings before CalTrans.<sup>6</sup>

The ban does not prohibit your work with the contractor, only your personal involvement as it pertains to returning to CalTrans to personally appear or on any report submitted to CalTrans.<sup>7</sup> Based on your facts, it appears you will be reviewing Resolutions of Necessity on behalf of your employer as well as HSR. If any of these Resolutions go before CalTrans, you would not be able to personally participate nor would you be able to be personally identified on any documentation before CalTrans.

### *Permanent Ban*

The “permanent ban” prohibits a former state employee from “switching sides” and participating, for compensation, in any proceeding involving specific parties before any court or state administrative agency, or assisting others in the proceeding, if the former employee participated in the proceeding 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).)<sup>8</sup>

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

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<sup>6</sup> If you qualify as a “consultant” under the Act (see Regulation 18701(a)(2)(B), enclosed), a special provision applies. Section 87406(e)(1) states that the prohibitions of the one-year ban do not apply to any individual who is or becomes an “officer or employee of another state agency, board, or commission if the appearance or communication is for the purpose of influencing legislative or administrative action on behalf of the state agency, board, or commission.”

<sup>7</sup> Additionally, HSR is not under the budgetary control of CalTrans.

<sup>8</sup> For purposes of the permanent ban, “[t]he date on which an official permanently leaves office or employment or takes a leave of absence is the date on which the official is no longer authorized to perform the duties of the office or employment, and the official stops performing those duties, even if the official continues to receive compensation for accrued leave credits.” (Regulation 18746.4(a)(1).)

decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information . . .” (Section 87400(d).)

Based upon the information you provided, you do not appear to have participated in “proceedings” on behalf of CalTrans. While with CalTrans, you reviewed Resolutions of Necessity before they were presented before the Public Works Board. Presumably, once those Resolutions of necessity are reviewed and presented, the Public Works Board makes a decision regarding the property. If any of the Resolutions of Necessity that you reviewed on behalf of CalTrans is ongoing, you would not be able to continue work on the same Resolution as a contractor for HSR.<sup>9</sup>

Based upon the facts you have provided, it is unlikely that if you accept a position with HSR you would be subject to the permanent ban.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heather M. Rowan  
Counsel, Legal Division

HMR:jgl

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<sup>9</sup> Again, if you qualify as a consultant under Regulation 18701, you might be considered to be acting on behalf of the State of California and the permanent ban would not apply.