

April 1, 2015

Sean L. Spear
635 W. Palm Avenue
Monrovia, CA 91016

Re: Your Request for Advice
Our File No. A-15-017

Dear Mr. Spear:

This letter responds to your request for advice regarding the post governmental employment provisions of the Political Reform Act (the "Act").¹ We do not provide advice on other conflict of interest restrictions, if any, that could arise such as those governed by the common law and Public Contract Code Section 10411.

QUESTION

As the former Executive Director of the California Debt Limit Allocation Committee may you advise and represent a private consulting firm and its clients on matters related to the Committee, the State Treasurer's office, or any other boards, commissions and agencies chaired by the State Treasurer?

CONCLUSION

The Act's post-employment provisions do not prohibit you from working for a private consulting firm that has clients with matters before the Committee, the Treasurer's office, or any other board, commissions, and agencies chaired by the State Treasurer. However, under the Act's one year ban, you will be prohibited from being paid by the firm to make an appearance or communication for the purpose of influencing decisions regarding your clients' applications before the Committee, the Treasurer's office, or any board, commission, or agency whose budget, personnel, and other operations are subject to the control of the Treasurer's office. The permanent ban will not apply so long as it does not involve a judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official.

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.

FACTS

You left your appointed position as Executive Director of the Committee on February 1, 2015. It is one of 14 “Boards, Commissions and Agencies” chaired by the State Treasurer.

The Committee allocates California’s \$3.1 billion annual tax-exempt “private activity bond program” providing low-cost financing for private projects of public benefit such as single family home mortgages, affordable multi-family housing, industrial development projects, environmental clean-up efforts and student lending.

The bonds are issued by or on behalf of local or state governments for financing of qualified projects. The lower borrowing costs allow the development of projects that may not otherwise be feasible if financed at market rates. Unlike typical municipal bonds, the payment of principal and interest on “private activity” bonds is not the responsibility of the issuing government agency, but that of private business receiving the proceeds. The interest paid to bond holders is exempt from federal taxes.

The Committee was created in response to the 1986 Federal Tax Reform Act, which imposed a limit on how much private activity bonds can be issued in a state each year. The limit is determined by a state’s population, multiplied by a specified dollar amount. The Committee was established to administer the allocation of this bond ceiling or “cap” and to make certain that the total amount of private activity bonds issued does not exceed the limits established under federal law.

The Committee reviews private activity bond applications and determines if the proposed programs—privately owned projects or public programs assisting private individuals—meet the public benefit criteria under the Internal Revenue Code.

The Committee is responsible for the following:

- *Setting the Annual State Ceiling:* The Committee is required to establish the California allocation limit for private activity bonds.
- *Allocating the State Ceiling:* The Committee is granted the sole authority for allocating the cap or annual limit for state applicants.
- *Other Administrative Functions:* The Committee is authorized to prepare forms, establish procedures and regulations, set priorities, require a performance deposit, assess fees, and perform other administrative functions as necessary.

For the past five years, you managed staff that performed administrative functions, reviewed private activity bond applications, and made recommendations to the Committee whose voting members are the Treasurer (as Chairman), the Governor, and the State Controller.

The Committee is included within the conflict of interest code of the Treasurer's office. The Committee is located within the Treasurer's office, and its personnel, operations and its budget are subject to the control of and integrated within the Treasurer's office.²

On March 2, 2015, you began employment with 1410 Partners LLC, a private consulting firm. The firm performs project financing and development consulting for private and public agency clients in the area of affordable housing.

At 1410 Partners, you consult with clients on the acquisition, development, financing and execution of affordable housing developments. You would advise clients on their interactions with the Committee and other housing-related local, state, and federal agencies. You may conduct research related to rules issued by the Committee, and the statutes, regulations, and policies governing the Committee and the other related entities. You may also prepare applications for an award of allocation by the Committee and draft communications for clients, including public comments to the Committee.

You will not directly communicate or appear in any of 1410 Partners' or your clients' communications or appearances with the Committee. You wish to know whether you would be permitted to advise 1410 Partners and its clients on matters relating to the Committee, the State Treasurer's Office and other boards, commissions and agencies chaired by the State Treasurer.

ANALYSIS

Public officials who leave state service are subject to two types of post-governmental employment provisions under the Act, the one year ban and the permanent ban. In addition, Sections 87407 and 87100 prohibits officials from making, participating in making, or using their position to influence decisions affecting persons with whom they are negotiating employment, or have any arrangement concerning employment. These provisions are commonly referred to 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 actions or any

² In a March 23, 2015 email you stated that The Committee and other boards, commissions, and agencies chaired by the Treasurer receive funds from the Treasurer's office through an annual contract with the office to provide it with services such as personnel, information technology, and accounting. In a March 25, 2015 email you added that while the Committee controls its own budget, it does so with "guidance" from the Treasurer's Office, as the Treasurer is the chair of the Committee. The other Committee members usually defer to the chair on operational matters. The Committee's Executive Director serves at the pleasure of the Treasurer.

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.³

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.⁴ 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.⁵

In contrast to the permanent ban, which only applies to certain matters involving specific parties such as "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."⁶ 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."⁷ 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.⁸

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.⁹

You have acknowledged that as executive director with the Committee you are a designated employee of the department. Therefore, the one year ban of Section 87406 is applicable to you.¹⁰

Scope: Defining Your Agency

The prohibition in Section 87406 (d)(1) applies to those activities before an agency "for which [you] worked." Generally, a designated employee's state administrative agency means the agency for which he or she worked, or any board or commission under the agency's control.¹¹

³ Section 87406; Regulation 18746.1.

⁴ Section 87406(d)(1); Regulation 18746.1(a)(2).

⁵ Regulation 18746.1(b)(3) and (4).

⁶ Regulation 18746.1(b)(5).

⁷ Regulation 18746.2.

⁸ *Ibid.*

⁹ Regulation 18746.1(b)(6).

¹⁰ 82019(a)(3); Regulation 18746.1(a)(4)

Because the Committee is included within the Treasurer's conflict of interest code and its "budget, personnel, and other operations" are subject to the control of and integrated within the Treasurer's office, we find that for purposes of the Act's one year ban the two entities are considered the same agency.¹² In addition, other "boards, commissions and agencies" chaired by the state Treasurer whose budget, personnel and other operations are subject to the control of the Treasurer's office are also part of the same agency.

Activities at Issue

You left the Committee on February 1, 2015 and began employment with 1410 Partners LLC, a private consulting firm. Accordingly, for a period of twelve months from the date you left the Committee, you are prohibited from making an appearance or communication before the Committee, the Treasurer's office or other "boards, commissions and agencies" whose budget, personnel and other operations are also subject to the control of the Treasurer's office on behalf of your employer if the appearance or communication is for the purpose of influencing any administrative or legislative actions or any discretionary act involving the sale or purchase of property or goods or the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract.

The Committee's review of applications for federal authority to issue tax-exempt bonds for private projects and its allocation of the annual limit to applicants is a discretionary act involving the issuance or awarding of a grant or contract. Therefore, you may not contact, call, or otherwise appear before the Committee, the Treasurer's office or any other board, commission, or agency subject to the budgetary control of the Treasurer's office to influence decisions regarding your clients' applications for one year after leaving state employment.

You may prepare correspondence, advise clients and prepare client applications that will be submitted to the Committee for review, but they may not be sent over to the Committee under your signature. You may also train and work with other employees of the private firm in preparing allocation applications, as long as you personally are not appearing before or communicating with the Committee, the Treasurer's office or any other board, commission, or agency subject to the control of the Treasurer's office in order to influence decisions regarding your clients' applications, or their review, approval or disapproval.

Permanent Ban

The "permanent ban" prohibits a former state employee from "switching sides" and participating, for compensation, in certain proceeding involving the State of California and other specific parties, or assisting in the proceeding if the proceeding is one in which the former state employee participated while employed by the state.¹³ The permanent ban applies when an

¹¹ *Grimm* Advice Letter, No. I-96-114.

¹² Regulation 18746.1(b)(6).

¹³ Sections 87401 and 87402; Regulation 18741.1.

official has permanently left or takes a leave of absence from any particular office or employment.¹⁴

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”¹⁵

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”¹⁶

Therefore, you may not represent your firm’s clients in any proceeding, application, request for ruling, or other determination before the Committee regarding an allocation application that you have participated in while in state service. You have not described a particular case or proceeding involving a client that would be subject to the permanent ban. Should you have a question about a specific proceeding, please contact us for further advice.

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

Sincerely,

John W. Wallace
Assistant General Counsel

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl

¹⁴ Regulation 18741.1(a)(1).

¹⁵ Section 87400(c).

¹⁶ Section 87400(d).