



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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May 13, 2015

Amber Maltbie, Associate  
Nossaman LLP  
777 S. Figueroa Street, 34<sup>th</sup> Floor  
Los Angeles, CA 90017

Re: Your Request for Informal Assistance  
**Our File No. I-15-080**

Dear Ms. Maltbie:

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 (Regulation 18329(c)(4)(A)), and 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. And because your questions are general in nature and not limited to a specific appearance or communication, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTION

What restrictions are placed on Patrick Perry’s current employment activities as a result of his former employment with the California Community Colleges Chancellors Office (“CCCCO”)?

### CONCLUSION

The restrictions that exist based on his former position with the CCCCCO include the permanent ban on switching sides and the one-year ban, both of which are explained in detail below.

### FACTS

You are requesting advice on behalf of your client, Patrick Perry, who began working for WestEd as a Senior Research Associate on May 1, 2015. Prior to this, Mr. Perry was a designated

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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).)

employee with the CCCCCO for over ten years. The CCCCCO administers grant funds (Prop 98 and other federal funding sources) for adult education and career technical education (“CTE”) functions.

The Butte-Glenn Community College District (“Butte”) is a current CCCCCO grantee. The contract between the CCCCCO and Butte specifies a range of activities surrounding the advisement of the CCCCCO on adult education, CTE research, data collection and accountability functions, as specified in existing state and federal laws and programs. The contract also specifies the creation of data structures, reporting tools, and technical assistance concerning the use of these tools.

WestEd is a non-profit research and development agency that works to improve education. It is a combination of the Far West Laboratory and the South West Regional Laboratory, two of the nation’s original educational laboratories created by Congress in 1966. WestEd was created in 1995, pursuant to a joint powers agreement between Far West and SWRL. Butte has a subcontract with WestEd that has been approved by the CCCCCO. Under the subcontract, WestEd assists Butte in fulfilling the grant requirements. The grant is managed and administered by the CCCCCO’s Economic Development Division.

The Butte subcontract was not administered or developed in any respect by Mr. Perry. While at CCCCCO, he had no supervisory authority over the Economic Development Division, nor did he play any role in the awarding of the grant to Butte. Additionally, he had no involvement in the subcontract between WestEd and Butte. In his new position, WestEd would like Mr. Perry to assist in performing the terms of the subcontract.

## 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, Section 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.

Initially, we note that WestEd is a non-profit organization that is not considered a California state or local government agency required to adopt a conflict of interest code under the Act. (*Donovan* Advice Letter, No. A-99-269.) The Act’s post-employment restrictions therefore apply to Mr. Perry in his new position with WestEd. (See, e.g., *Brandes* Advice Letter, No I-02-134.)

### **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 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).) 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).)

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." (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).)

With respect to Mr. Perry's new position with WestEd, appearances and communications before the CCCCO, or any other state agency "which budget, personnel, and other operations are subject to the control" of the CCCCO, on behalf of WestED are prohibited for a one-year period if made for the purpose of influencing administrative or legislative action,<sup>3</sup> 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.

Not all communications however 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, emphasis added.) Thus, while an appearance or communication before the CCCCO to influence the awarding, amendment or revocation of a contract is prohibited, the one-year ban does not generally prohibit Mr. Perry, under the subcontract between Butte and WestEd, from assisting Butte in fulfilling the requirements of its existing contract with CCCCO.

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<sup>3</sup> For the definitions of "administrative action" and "legislative action," consult Sections 82002(a) and 82037, respectively.

We caution however that that in making any appearance of communication before CCCCCO, the exception for administering, implementing, or fulfilling the terms of an existing contract is rather narrow. For example, while Mr. Perry may seek CCCCCO's interpretation of a contractual term, Mr. Perry is prohibited from recommending any changes to the existing terms. If Mr. Perry needs further assistance relating to any specific appearance or communication before the CCCCCO, he should seek additional advice describing the appearance or communication.

### **Permanent Ban**

The “permanent ban” prohibits a former state employee from “switching sides” and participating, for compensation, in certain proceedings 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. (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).)

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).)

To apply the permanent ban to your situation, you need to determine if any of the actions in which Mr. Perry may engage on behalf of his new employer involve a *proceeding* in which he *participated* while employed at the CCCCCO. (Regulation 18741.1(a)(4).) According to the facts, the contract between the CCCCCO and Butte is managed and administered by the CCCCCO’s Economic Development Division. While at CCCCCO, Mr. Perry had no supervisory authority over the Economic Development Division, nor did he play any role in the awarding of the grant to Butte.

Accordingly, the permanent ban does not prevent Mr. Perry, under the subcontract between Butte and WestEd, from assisting Butte in fulfilling the requirements of its existing contract with CCCCCO.

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: Jack Woodside  
Senior Counsel, Legal Division

JW:jgl