



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 7, 2015

Barton Newton, P.E.
Director, Complex Bridges & Structures
Parson Brinckerhoff, Inc.
2329 Gateway Oaks Drive
Sacramento, CA 95833

Re: Your Request for Advice
Our File No. 15-085

Dear Mr. Newton:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, we do not advise regarding past conduct. (Regulation 18329(b)(8).) The advice below pertains only to conduct yet to occur.

QUESTION

Does either the one-year ban or the permanent ban prevent you from accepting a position on CalTrans' Seismic Advisory Board?

CONCLUSION

Yes. The one-year ban prevents you, for a period of one year, from participating on the Seismic Advisory Board. Upon the conclusion of the one-year ban, you may participate on the Seismic Advisory Board. The permanent ban, however, may limit your involvement in specific decisions of the Seismic Advisory Board as more fully analyzed below.

FACTS

You are a former CalTrans employee and you retired on September 15, 2014. As a CalTrans employee, you were a State Bridge Engineer responsible for standards in policy and bridge design and designated in CalTrans' conflict of interest code. Since your separation from state service, you have begun working for Parsons Brinckerhoff as the Director of Complex Bridges.

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.

CalTrans advertised a Request for Qualifications to fill current vacancies on the CalTrans Seismic Advisory Board. You applied for one of the openings in March, interviewed in June, and now await the final selections. You would serve on the board in your role as a Parsons Brinckerhoff employee representative and expert. The Seismic Advisory Board is a board that CalTrans develops made up of both community members and CalTrans employees. The board recommends and reviews seismic policy used on California bridge projects. You state that the board “does not review or advise on specific projects or contracts.”

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 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.²

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

² Because we do not advise on past conduct, we do not address whether your applying for the advisory board violated the revolving door provisions. Moreover, we are not providing assistance under Section 87407 as it no longer applies to your question.

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).)

As a member of the Seismic Advisory Board, you would be communicating, for compensation as an employee for a private company, with your former agency for the purpose of influencing administrative actions, namely, developing a seismic policy for the state. Because of this, the one-year ban prohibits your participation on the board as a Parsons Brinckerhoff employee. After September 15, 2015, the one-year ban no longer applies.

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. (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).)

You have not identified any “judicial, quasi-judicial, or other proceedings” as defined above in which you participated during your tenure at CalTrans or identified any particular decision before the Seismic Advisory Board. Accordingly, we cannot determine whether the permanent ban will apply should you accept a position on the board at the conclusion of the one-year ban. While you have stated that the Seismic Advisory Board “does not review or advise on specific projects or contracts,” the permanent ban may potentially apply to the review of general seismic requirements

if the requirements are limited to or necessitated by any particular project in which you participated as a CalTrans employee. If you need additional assistance regarding the permanent ban as it pertains to any specific decision of the Seismic Advisory Board after accepting a position on the board, you should seek further advice providing a thorough description of the proceeding and your past involvement.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Heather M. Rowan
Senior Counsel, Legal Division

HMR:jgl