



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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June 12, 2015

Shannon Crossen  
324 East 20th Street #9  
Costa Mesa, CA 92627

Re: Your Request for Advice  
**Our File No. A-15-102**

Dear Ms. Crossen:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

Do the revolving door provisions of the Act limit your activity with your current private-sector employer?

### CONCLUSION

No. Because (1) your position with the California Department of Transportation ("Caltrans") was not a designated position in Caltrans' conflict of interest code, and (2) in your former position you did not have responsibility for any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity, the revolving door provisions do not apply.

### FACTS

You were a Caltrans District 12 employee and left after three years of state service in October 2014. Your role at Caltrans was as an Associate Environmental Planner (Natural Science) (i.e. District Biologist). You stated that you did not manage projects, contracts or supervise projects or employees; rather you served as project biologist, requested and coordinated task orders from consultants, and served as project biology coordinator on biological resource task orders.

According to the Caltrans job description, the Associate Environmental Planner (Natural Science), under the general supervision of a Senior Environmental Planner, performs the more difficult and complex natural science studies. The incumbent will research and develop reports to

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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.

inventory, identify, and analyze vegetation and wildlife and assist in the design, development, and recommendation of mitigation measures to avoid, reduce, or compensate for impacts to biotic resources. Incumbent may also conduct or oversee construction monitoring activities, assist in the design, development and recommendation of mitigation measures to avoid, reduce or compensate for impacts to biotic resources, assist in the preparation of permits or amendments. Caltrans did not include your position in their conflict of interest code (approved in 2012). Thus, as an employee of Caltrans you did not file a Statement of Economic Interests (Form 700).

You have since started working for a local private consulting firm, ICF International (“ICF”), on several projects in District 12 and other Caltrans districts in southern California. Caltrans has an on-call Architectural and Engineering (A&E) contract with ICF to conduct biological related task orders. Caltrans District 12 does not have any other biology consultants other than ICF under this contract. The work entails ICF preparing technical studies, reporting, filed surveys, and permitting for Caltrans. Your role with ICF is to conduct these tasks as a consultant biologist on task orders under the A&E contract. Some of these projects were projects that you worked on while you were a state employee and some you had never worked on while at Caltrans.

According to the Caltrans Project Development Workflow Task Manual:

“Architectural and Engineering (A&E) contracts can be used to accomplish work that cannot be performed satisfactorily by state staff or that is of such a highly specialized or technical nature that the expertise is not available within state service. Examples of this are contracts for Special Environmental Studies and Hazardous Materials Investigations. The Department may also contract out if the services are of such an urgent, temporary, or occasional nature that the delay would defeat the purpose, or if it doing so is in the best interest of the safety, health and welfare of the public. An example would be “Emergency” contracts, which are used when a natural disaster, such as an earthquake or a flood, has caused the closure of highways.

“A&E contracts can be either project specific or ‘On-Call’ contracts. On-Call contracts are used when the work is not identified for any specific project until after the consultant has been hired. The specific project and work is identified later in a ‘Task Order.’”

“ON-CALL CONTRACT:

“On-Call contracts are used when services are to be provided at short notice with minimum delay and when services required are of a minor nature. This type of contract as used for contracting out ‘portions’ of projects (such as the preparation of a project PS&E,<sup>2</sup> a hydraulic study, electrical PS&E, Survey DTM).”

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<sup>2</sup> Plans, specifications and estimate.

## 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. These provisions are commonly referred to as the “revolving door” prohibitions.<sup>3</sup>

### *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).)

The one-year ban generally only applies to employees of a state administrative agency who hold a position that is designated or should be designated in the agency’s conflict-of-interest code.

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<sup>3</sup> 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.

(Section 87406(d)(1); Regulation 18746.1(a)(2)).) Your position is not designated in the agency's code, and there is nothing in your job description that implies it should be designated. For this reason, the one-year ban does not apply to you.

### *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).)

The permanent ban applies only to a former state administrative official who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity. Such positions are generally designated in the agency conflict of interest code. Based on your job description and duties as well as your former employer's conflict of interest code, your position does not qualify you as engaging in judicial, quasi-judicial, or other proceedings because the responsibilities of an Associate Environmental Planner (Natural Science) are technical or ministerial.<sup>4</sup> You are therefore not subject to the permanent ban.<sup>5</sup>

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<sup>4</sup> An action is ministerial, even if it requires considerable expertise and professional skill, if there is no discretion as to the outcome (or at least, no discretion with respect to any part of the result which could influence the governmental decision in question). An example of this would be a complex calculation for which there is a single "right" answer. While it might take a person with a great deal of technical expertise and judgment to find the answer, such a person would still not be participating in a governmental decision such that their position should be designated in a conflict of interest code or, after they leave state service, subject to the permanent ban. (*Kaplan* Advice Letter, No. A-82-108.)

<sup>5</sup> In contrast, in the *Colburn* Advice Letter, No. I-07-135, we concluded that a Senior Environmental Planner at Caltrans should have been designated in Caltrans' conflict-of-interest code because persons in that position approved and disapproved environmental documents as part of Caltrans' approval of local highway programs, thereby obligating Caltrans to a particular course of action.

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: John W. Wallace  
Assistant General Counsel  
Legal Division

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