



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

June 8, 2020

Patrick Chung
CEO Zeuss Technologies, Inc
922 Oakes Street
East Palo Alto, CA 94303
patrick@zeuss.tech

Re: Your Request for Advice
Our File No. A-20-061

Dear Mr. Chung:

This letter responds to your request for advice on behalf of John Chiang regarding the post-government employment provisions of the Political Reform Act (“Act”).¹ Please note that we are only providing advice under the post-government employment provisions of the Act. We therefore offer no opinion on the application, if any, of other post government employment laws, such as Public Contract Code section 10411.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

May former state treasurer, John Chiang, now a Zuess Technology, Inc.’s employee and board member, communicate with the Department of Business Operations (“DBO”) regarding Zuess’ subsidiary, Athena Pay, Inc.’s, pending license application before the DBO to facilitate bill payments for the cannabis industry?

CONCLUSION

Yes, where no facts indicate that Mr. Chiang’s involvement in the cannabis industry banking issues was other than on a general policy level, the permanent ban does not prohibit his representation of a private party on this DBO licensing matter.

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 AS PRESENTED BY REQUESTER

John Chiang, a former elected state official, left state office on January 7, 2019. Mr. Chiang was hired by Zuess Technology, Inc. (“Zuess”) on January 10, 2019 as a member of its Board of Directors. Since January 2019, Mr. Chiang has been a fiduciary of the company and has been working with the executive team with respect to connecting the team to the financial industry and the cannabis industry. Zuess, through its wholly owned subsidiary Athena Pay, Inc., (“Athena”), is applying for a bill pay license from the DBO to facilitate payments for the cannabis industry.² Athena is a money service business and the bill pay license is a subset of the money transmission law. Mr. Chiang seeks advice as to whether he may communicate with the DBO on the licensing process. Mr. Chiang was originally hired to be a Board member and not to communicate with the DBO or any other state official.

Background: State Treasurer and Cannabis Banking Issues

During his term as State Treasurer,³ Mr. Chiang served as the chairperson of an 18-member Cannabis Banking Working Group (“CBWG”). Two of the members were Jan Owen, then Commissioner of the DBO; and Lori Ajax, Chief of the Bureau of Cannabis Control. The CBWG published a report entitled, “Banking Access Strategies for Cannabis-Related Businesses” in November 2017. You provided the report and subsequent feasibility study, which focused on the conflict between state and federal cannabis laws, the cannabis industry’s resulting lack of access to banking institutions and recommendations for the future.

As background, the CBWG report recommended four actions be taken:

- (1) Implementation of safer, more effective, and scalable ways to handle the payment of taxes and fees in cash that minimize the risks to stakeholders;
- (2) State and local governments should develop a data portal of compliance and regulatory data and make it available to financial institutions that bank cannabis businesses;
- (3) A feasibility study of a public bank or other state-backed financial institution that provides banking services to the cannabis industry should be conducted; and

² The DBO is an Executive Branch department, formed in 2013 to merge former Department of Corporations and the Department of Financial Institutions. The head of the department is appointed by the governor, and reports to the Business, Consumer Services & Housing Agency. (See <https://dbo.ca.gov/history/>) The DBO licenses and regulates individuals and entities that provide financial services in California. The DBO’s regulatory jurisdiction extends over state-chartered banks and credit unions, money transmitters, securities broker-dealers, investment advisers, non-bank installment lenders, payday lenders, mortgage lenders and servicers, escrow companies, franchisors and more. (See <https://dbo.ca.gov/2019/10/03/departments-of-business-oversight-issues-cannabis-banking-guidance/>)

³ We note Mr. Chiang previously served as State Controller from 2007 to 2015 and on the California Board of Equalization from 1997 to 2007; however, no facts were raised regarding these positions, nor do they appear to be relevant to this issue.

(4) A multistate consortium of state government representatives and other stakeholders should be established to pursue changes to federal law to remove the barriers to cannabis banking.

(CBWG Report, State Treasurer's Introductory Letter, p. 2)

In June 2018, the State Treasurer's Office issued a request for proposal ("RFP") for a financial and operational feasibility study for a "State Backed Financial Institution to Serve Cannabis-Related Businesses" to pursue goal (3) above. The purpose of this feasibility study was to "consider costs, benefits, risks, and regulatory issues, including capitalization, deposit insurance, and access to interbank funds transfer systems." (CBWG Report, p. 4.)

In December 2018, Level 4 Ventures, Inc. produced the "State-backed Financial Institution (Public Bank) for the State of California Servicing the Cannabis Industry Feasibility Study." The study stated that the CBWG "correctly identified three reasons that it is in the public interest to move the cannabis industry out of cash and into electronic banking" due to concerns about cash causing an increase in violent crime, additional costs and staff time, and thwarting the normal access of businesses to banking. (Study, p. 9.) The study recommended the State designate a lead agency with responsibility for improving access to banking by the cannabis industry, and then have that agency establish a project with primary responsibility in this area with an objective of improving access to banking services by the California legal cannabis industry. The project would primarily accomplish this through facilitation, communication, and coordination. (Study, pp.5-7.)

The DBO Bill Pay License Application for Zeuss's Subsidiary Athena

You provided additional information regarding the DBO bill pay license at issue. The bill pay license Zeuss's subsidiary seeks was not established based on the CBWG's recommendations, report or the resulting feasibility study. You state the bill pay license is authorized under the "Check Sellers, Bill Payers and Proraters Law" which was enacted in 1947 and was originally named the "Check Sellers and Cashers Law." The DBO license at issue relates generally to the CBWG Report's first goal: safer handling of taxes and fees. It also relates to the overall safety of the public by facilitating electronic payments to vendors and bills.⁴

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. Mr. Chiang is no longer subject to the one-year ban, as he left office over a year ago. This analysis focuses on the permanent ban.

⁴ In addition, you note that the "space that Zeuss is focused" relates to CBWG's report section entitled "Expanding Cannabis Industry Access to Banking Services under Current Law" (see goal 2, above). The report describes the need for financial institutions to "have the tools and data they need to navigate the narrow path to cannabis banking." These services include providing items such as money services, recordkeeping and compliance services to financial institutions serving cannabis customers. (CBWG Report, pp. 16-17.)

Permanent Ban:

The “permanent ban” prohibits a former state employee from “switching sides” and participating, for compensation, in a 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 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, 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 official. These types of proceedings are defined as “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).) The permanent ban does not apply to the making of rules or policies of general applicability, such as a rulemaking proceeding involving rules of general applicability. (See *Beale* Advice Letter, No. A-00-146.)

Mr. Chiang participated as the chairperson of the CBWG as State Treasurer. However, the facts indicate the CBWG’s work focused on general issues and did not involve a particular matter involving specific parties.⁵ No facts indicate he was involved in a proceeding as a state official relevant to the Zuess affiliate’s licensing request before the DBO. The DBO is a department in the executive branch, and there are no facts indicating Mr. Chiang participated in proceedings before the DBO related to this licensing matter.

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

Sincerely,

Dave Bainbridge
General Counsel

By: L. Karen Harrison
Senior Counsel, Legal Division

LKH:aja

⁵ The RFP which resulted in a contract with a specific party for the feasibility study is a “proceeding” under Section 87400(c); however, that contract is not at issue here.