



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 28, 2020

Tim O'Brien
4619 Minnesota Ave
Fair Oaks, CA 95628
obrientimothy@gmail.com

Re: Your Request for Advice
Our File No. A-20-090

Dear Mr. O'Brien:

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

Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest or Government Code Section 1090. Because we do not offer advice beyond the confines of the Act, we must refer you to your agency's counsel and statement of incompatible activities to ensure that your proposed activities do not violate conflict-of-interest laws outside the Act or are not otherwise incompatible with your responsibilities to the agency.

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

Given your employment with the State Water Board and your work on the draft Waste Discharge Requirements (WDR) Program, would the revolving door provisions of the Act prohibit you from commenting on the draft WDR post-retirement?

CONCLUSION

As you state that any appearance will be only made in representation of your personal interest resulting in your previous work on the project and that you are not currently employed, compensated, or promised compensation, from any entity, the revolving door provisions of the Act

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.

do not preclude you from participating in this process because you are not being compensated for any activity in reviewing or commenting on the draft WDR.

FACTS AS PRESENTED BY REQUESTER

You are employed by the State Water Board and worked on developing the draft Waste Discharge Requirements (WDR) Program for over two years. You are intending to retire and your last day in the office was January 1, 2020. Due to accumulated leave credits, you have been on leave since January 2, 2020 and will fully retire on September 8, 2020.

The State Water Board released a draft WDR on July 3, 2020. It provides for a 30-day public comment period, with comments due by August 5, 2020. You would like to comment on the draft in your personal capacity. You have been reviewing the draft WDR and preparing comments on your leave time. You are not being paid for this work, nor have you been promised employment by any entity to do so.

ANALYSIS

Public officials are subject to two post-governmental employment restrictions under the Act, known as the “revolving door” prohibitions. The “one-year ban” and the “permanent ban” typically apply after an official leaves his or her public employment. The “revolving door” concepts are, generally:

- The One-Year Ban - The “one-year ban” prohibits a former employee of a state administrative agency from making any formal or informal appearance, or making any oral or written communication, *for compensation*, with his or her former agency for the purpose of influencing a wide variety of administrative or legislative actions, or influencing certain proceedings. (See Section 87406; Regulation 18746.1.)
- The Permanent Ban - The “permanent ban” prohibits a former employee of a state administrative agency from “switching sides” and participating, *for compensation*, in any specific proceeding involving the State of California, or assisting others in the proceeding if it is one in which the former employee participated while employed by the state. (See Sections 87401-87402; Regulation 18741.1.)

You have stated that your last day of work was January 1, 2020, but that due to accumulated leave, your official date of retirement will be September 8, 2020. For purposes of the one-year and permanent bans, an official is deemed to have permanently left once they stop performing the duties of the office “even if the official continues to receive compensation for accrued leave credits.” (Regulation 18746.4(a)².) Because you no longer performed the duties of employment as of January 2, 2020, the one-year ban commenced on this date and will expire on January 2, 2021, despite the fact that you will not officially retire until September 8, 2020.

² “...a person shall be deemed to have left office permanently if the person merely receives compensation for accrued leave credits.” (18746.4(b)(2).)

The revolving door provisions, however, only preclude activities undertaken *for compensation*. From the facts provided, you are undertaking this activity on your own time and solely because of your personal interest resulting from your experience and expertise in the area. Moreover, you are not representing, employed, compensated, or promised employment or compensation by any entity to review or comment upon the draft WDR. Accordingly, neither the one-year nor permanent bans would preclude this type of activity.

Please keep in mind that the receipt of compensation, or any promised compensation, will necessarily change this analysis. (Regulations 18741.1(a)(2) and 18746.1(b)(3).)

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "EM Boyd", is positioned above the typed name.

By: Erika M. Boyd
Senior Counsel, Legal Division

EMB:aja