



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 1, 2022

Sarah Lang
Bell, McAndrews & Hiltachk, LLP
455 Capitol Mall, Ste 600
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-22-037

Dear Ms. Lang:

This letter is in response to your request for advice on behalf of retired Merced County Executive Officer James Brown regarding conflict of interest provisions of the Political Reform Act (the Act).¹ Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. 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 that 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 Mr. Brown assist and advise the Rural County Representatives of California (RCRC), other county members, its affiliates or one of the private financial advisors on issues related to bonds and other matters, such as new programs, that may arise so long as Mr. Brown is not appearing before or communicating with Merced County itself and may he appear before the RCRC Board in an attempt to influence RCRC decisions in administrative or legislative actions where the County is a member of RCRC and sits on the RCRC Board of Directors?²

CONCLUSION

No. The one-year ban would prohibit Mr. Brown from making any appearance or communication before an officer or employee of Merced County for the purpose of influencing the officer's or employee's decision in any administrative or legislative action. This prohibition extends to any appearance before or communication with RCRC and its board because one of RCRC's

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 18104 through 18998 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.

² Your request for advice originally included another question regarding whether the one-year ban would apply to a rail operator involving potential issues under Section 1090. Mr. Brown has requested withdrawal of this part of the request; accordingly, it is withdrawn pursuant to Regulation 18329(b)(5).

board members is a Merced County Supervisor serving on the board in representation of the county and in his official capacity. Accordingly, the one-year ban prohibits Mr. Brown from advising and assisting RCRC or appearing before or communicating with its board.

FACTS AS PRESENTED BY REQUESTER

Retired Merced County Executive Officer James Brown permanently left Merced County on February 25, 2022, after serving nearly 32 years with the County, with the last 10 years as Chief Executive Officer. A private consulting opportunity is now possible for Mr. Brown in his retirement, and he seeks advice before entering into any contracts.

RCRC is a 39-member county nonprofit service entity. You state that RCRC is not a governmental agency.³ RCRC advocates on behalf of California's rural counties. It works with its membership on rural issues at the state and federal levels, providing legislative and regulatory representation. It works with affiliated entities such as the Golden State Finance Authority and National Homebuyer's Fund. RCRC and its affiliated entities work with private financial advisors on bond issues and fee studies. The RCRC Board of Directors is comprised of an elected member of the Board of Supervisors from each of its 39 member counties; Merced County is a member of RCRC with a County Supervisor serving its board.

Mr. Brown may be engaged to assist and advise either RCRC or one of the private financial advisors on issues related to bonds, as well as other matters within the scope of Mr. Brown's expertise, such as developing new programs for the benefit of all county members. Mr. Brown would be appearing before and communicating with State and Federal agencies on behalf of RCRC, member counties, affiliates, or the private financial advisor. While these projects may benefit Merced County, Mr. Brown will not be appearing before or communicating with Merced County directly and will not personally be identified in connection with any appearance or communication with Merced County. However, Mr. Brown will be asked to appear before the RCRC Board to provide content that may influence RCRC decisions in administrative or legislative actions.

ANALYSIS

High-level local governmental officials, including county executive officers, who leave governmental service, are subject to the Act's one-year ban for local officials under Section 87406.3, also known as the local "one-year ban." This law prohibits certain former local officials, including elected officials and chief administrative officers of a county, from "making any oral or written communication to" their former agencies, for compensation and in representation of another person, for the purpose of influencing any legislative or administrative actions, including quasi-legislative and quasi-judicial actions, or any discretionary actions involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property. (Section 87406.3 (a).)⁴

³ We base this advice on the facts provided. However, we note that the RCRC has not requested advice regarding its potential status as a governmental agency under the provisions of the Act. Nothing in this letter shall be construed as a determination of whether the RCRC is a governmental agency for purposes of the Act.

⁴ Additionally, prior to leaving office, local officials may not take part in decisions with a financial effect on a prospective employer under Section 87407. All public officials leaving governmental service, including local officials, are subject to restrictions when negotiating prospective employment. Under Section 87407 and Regulation 18747, prior

An official subject to the local one-year ban may not appear before or communicate with any officer or employee of either of the following:

- The local agency, or any committee, subcommittee, or present member of the local agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. (Regulation 18746.3.)
- Any local agency that is subject to the direction and control of the agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. This is known as the “pyramid concept.” If a former official’s local agency controls the budget, personnel, and other operations of another agency, the official is prohibited from appearing before or communicating with both agencies. (Regulation 18746.3.)

An appearance or communication is prohibited only if the former official is compensated or promised compensation. (Regulation 18746.3.) “Compensation” is broadly defined to include “remuneration or payment of any kind.” (*Souza* Advice Letter, No. A-06-114.) “Payment” is defined to mean a “payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.” (Section 82044.)

Here, based on the facts provided, the RCRC board is comprised entirely of government officials, including a supervisor from Merced County, Mr. Brown’s former employer, who is serving on the RCRC board in his official capacity. An appearance by Mr. Brown before the RCRC board, therefore, would be an appearance to influence a decision by a Merced County official. This is prohibited by the local one-year ban rule. Thus, the one-year ban would prohibit Mr. Brown from advising and assisting RCRC or appearing before its board in attempt to influence its decisions in administrative or legislative actions because one of its board members is an official representing Mr. Brown’s former employer acting in his official capacity.

to separation from government service, a public official is prohibited from making, participating in making, or influencing a “governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.” In addition, the Act’s conflict-of-interest provisions prohibit an official from making, participating in making, or influencing any governmental decision with a reasonably foreseeable material financial effect on the source of promised income. (See Sections 87100, et seq. and Regulations 18700, et seq.)

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

Sincerely,

Dave Bainbridge
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

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