



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

March 6, 2023

Amilia Glikman  
KP Public Affairs  
621 Capitol Mall, Suite 1900  
Sacramento, CA 95814

Re: Your Request for Informal Assistance  
**Our File No. I-23-029**

Dear Ms. Glikman:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Please note that we are only providing advice under the post-governmental employment provisions of the Act and not under other post-government employment laws such as Public Contract Code Section 10411 or under Section 1090.

Given that your questions are general in nature, we are providing informal assistance. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).) This letter should not be construed as assistance on any conduct that may have already taken place.

In addition, this letter is based on the facts presented. The Fair Political Practices Commission (“Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Govt. Code section 83114.)

## QUESTIONS

1. Does the one-year ban prevent you, a former Deputy Legislative Counsel, from representing clients in your employment as a lobbyist for KP Public Affairs where it would require making an appearance or communicating before the Office of Legislative Counsel, members of the Legislature and their staff, or any other state agency with which the Office of Legislative Counsel maintains an attorney-client relationship?

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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 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. Was your work with the Department of Toxic Control Substances advising on generally applicable proposed and existing policies, procedures, guidance documents, regulations, and laws a “judicial, quasi-judicial, or other proceeding” for purposes of the permanent ban?

### CONCLUSIONS

1. The one-year ban will prevent you from appearing before or communicating with the Office of Legislative Counsel and any state administrative agency which budget, personnel, and other operations are subject to the direction and control of the Office of Legislative Counsel but will not generally prevent you from appearing before or communicating with the Legislature or any other state agency with which the office has an attorney-client relationship.<sup>2</sup>
2. Your work with the Department of Toxic Substances of a general or policy nature does not meet the definition of a “judicial, quasi-judicial, or other proceeding” for the purposes of the permanent ban as you were not making the kind of decisions or rulings geared towards a specific party or parties. (Section 87400(c).)

### FACTS AS PRESENTED BY REQUESTER

You are a former state employee with the Office of Legislative Counsel and Department of Toxic Substances Control and are now employed with KP Public Affairs. You are seeking advice regarding the applicability of both the Act’s one-year and permanent bans.

From July 2020 to July 2022 you served as Deputy Legislative Counsel IV with the Office of Legislative Counsel. You were also required to file a Form 700 in this position. Your responsibilities included drafting legislation and providing confidential legal advice regarding environmental legislation to members of the Legislature, their staff, and authorized stakeholders. Although the Office of Legislative Counsel provides legal advice to the Legislature, it is your understanding that you were classified as a State of California civil service employee, not an employee of the Legislature. You formally separated from state service on July 8, 2022, and started a new position as a lobbyist with KP Public Affairs on July 18, 2022.

From February 2012 to July 2020 you served as an attorney in various capacities with the Department of Toxic Substances Control (DTSC), including as Chief Counsel. At DTSC you held a position designated in the agency’s conflict of interest code and were required to complete a Form 700. You provided legal advice to the department, including its’ executive management and program staff, on various legal, regulatory, and policy issues, including but not limited to, proposed and existing department policies, procedures, guidance documents, regulations, and laws applicable to the entire regulated community. Work on these generally applicable matters did not involve a “specific party or parties.” With regards to your work at DTSC you are seeking advice as to

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<sup>2</sup> We note that this conclusion is limited to appearances and communications before officials and employees other than those with the Office of Legislative Counsel. To the extent an official or employee of the Office of Legislative Counsel attends any meeting, you may wish to seek further advice prior to taking part in the meeting.

whether work on these generally applicable matters constituted “judicial, quasi-judicial, or other proceedings under the Act for purposes of the permanent ban.

## ANALYSIS

Under the Act, public officials who leave state service are subject to two types of post-governmental employment provisions known as the one-year ban and the permanent ban. In addition, Section 87407 prohibits certain state and local officials from making, participating in making, or using their official position to influence decisions affecting persons with whom they are negotiating employment or have any arrangement concerning employment. (See Regulation 18747.) Colloquially, these provisions are known as the “revolving door” prohibitions.

### *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 action 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).) A “state administrative agency” is “every state office, department, division, bureau, board, and commission, but does not include the Legislature, the courts or any agency in the judicial branch of government.” (Section 87400.) The ban applies for 12 months from the date the employee permanently leaves state office or employment.

In contrast to the permanent ban, which only applies to certain “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 conversing by telephone or in person, corresponding in writing or by electronic transmission, attending a meeting, and delivering or sending any communication. (*Id.*)

Appearances and communications are prohibited if they are (1) before a state agency that the public official worked for or represented or (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. (Regulation 18746.1(b)(6).)

At issue is whether the Office of Legislative Counsel is a “state administrative agency” such that you are subject to the one year ban related to your past employment. The Legislative Counsel Bureau was created as a separate agency from the Legislature by statute in Section 10200. As you indicate in your request, while the office assists the Legislature, it is a separate entity, and you were

considered a civil service employee of the State of California. For these reasons, the Office of Legislative Counsel would be defined as a state administrative agency. (Section 87400.) You are subject to the one year ban until July 2023. For purposes of the one-year ban you may not appear before or communicate with the Office of Legislative Counsel or any state administrative agency which budget, personnel, and other operations are subject to the direction and control of the Office of Legislative Counsel. The one-year ban would not extend to the Legislature or other state agencies generally, provided there is no prohibited conduct before an officer or employee of the Office of Legislative Counsel involved in that appearance.

The one year ban is not applicable to your position at DTSC, as your employment ended in 2020.

### *Permanent Ban*

The permanent ban prohibits a former state employee from “switching sides” and participating, for compensation, in certain proceedings involving a specific party or parties and the State of California or assisting others 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 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).)

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).) A former state official who held a management position in a state administrative agency is deemed to have participated in a proceeding if: (1) the proceeding was pending before the agency during his or her tenure, and (2) the proceeding was under his or her supervisory authority. (Section 87400(d); regulation 18741.1(a)(4).)

“The permanent ban does not apply to a ‘new’ proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A ‘new’ proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings.” (*Rist* Advice Letter, No. A-04-187; see also *Donovan* Advice Letter, No. I-03-119.) New contracts with the employee's former agency in which the former employee did not participate are considered new proceedings. (*Leslie* Advice Letter, No. I-89-649.) A new contract is one that is based on new consideration and new terms, even if it involves the same parties. (*Ferber* Advice Letter, No. I-99-104; *Anderson* Advice Letter, No. A-98-159.) In addition, the application, drafting, and awarding of

a contract, license, or approval is a proceeding separate from the monitoring and performance of the contract, license, or approval. (*Anderson, supra; Blonien Advice Letter, No. A-89-463.*)

At issue is whether your work providing general guidance and on policy matters with DTSC meets the definition of a “judicial, quasi-judicial, or other proceeding.” Based upon the facts provided, there is no indication that your work involved a judicial, quasi-judicial, or other proceeding subject to the permanent ban. You state that your work was limited to providing general guidance, rather than making decisions on any proceeding, request, investigation, ruling, in relation to a specific party as noted above. Generally, the permanent ban will not apply to matters of general guidance and policy as described.

You have not provided any information as to your participation in any particular proceeding while employed as a state administrative official at DTSC or at the Office of Legislative Counsel for further analysis in terms of the permanent ban. To apply the permanent ban to your situation, you need to determine if any of the actions in which you now wish to engage on behalf of your new employer involve a proceeding in which you participated while employed at DTSC or at the Office of Legislative Counsel or were deemed to have participated as a supervisor. (Regulation 18741.1(a)(4).)

If a more specific issue arises surrounding either ban and your work with DTSC or the Office of Legislative Counsel and you require additional analysis you are encouraged to seek further advice.

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

Sincerely,

Dave Bainbridge  
General Counsel

By:   
Valerie Nuding  
Counsel, Legal Division

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