

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

September 13, 1984

Peter Grenell  
4340 - 25th Street  
San Francisco, CA 94114

Re: Advice Letter No. A-84-203

Dear Mr. Grenell:

Thank you for your request for advice on Government Code Section 87400, et seq.<sup>1/</sup>

### FACTS

Prior to September 30, 1983, you were employed by the State Coastal Conservancy. This agency carries out programs of coastal restoration, resources protection, enhancement and improvement. To further the programs, the agency can make grants or spend money directly on projects. Your civil service position with the agency was as State Coastal Project Development Analyst III. In this position, you served as:

(1) Project Manager. This position involved the day-to-day administration of specific projects.<sup>2/</sup>

(2) Program Manager. This position involved the day-to-day administration of several programs<sup>3/</sup> and the supervision of

---

<sup>1/</sup> Hereinafter all statutory references are to the Government Code, unless otherwise indicated.

<sup>2/</sup> For example, in one case, you worked with the City of Santa Barbara to help it restore its pier.

<sup>3/</sup> For example, one of the programs you were responsible for was the Urban Waterfront Restoration Program. This program has several projects within its purview.

project managers. While in this position, you also were directly involved in several projects.

(3) Assistant to the Executive Officer. This position involved, among other things, the administration of the agency's special projects. These were projects which did not fit into any of the agency's other program categories, or which were complex.

You also served as Acting Executive Director for several months in 1983. In this capacity, you were responsible for the entire agency. Now that you have terminated your state employment, you hope to be hired to work on various environmentally-related development projects in California.

#### QUESTIONS PRESENTED

Under the provisions of Section 87400, et seq.:

(1) May you perform work on a project which you did not work on while you were at the agency? May you appear before the Conservancy Board?

(2) May you perform work on a project if your only involvement with the project was to receive the initial telephone call from the project's proponent?

(3) May you perform work on a project if you had some involvement with the project while at the agency? You presented two specific situations for our analysis. These are discussed below.

#### DISCUSSION

Section 87401 provides:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof:

(a) By making any formal or informal appearance, or by making any oral or written communication with the

intent to influence, in connection with any judicial, quasi-judicial or other proceeding<sup>4/</sup> if;

(b) The State of California is a party or has a direct and substantial interest; and

(c) If the proceeding is one in which the former state administrative official participated.

In addition to the above prohibition, a former state employee may not "aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401." (Section 87402.)

You are a former state administrative official. The Coastal Conservancy conducts "judicial, quasi-judicial, or other proceedings" with regard to projects involving specific parties. Assuming that the state is a party or has a direct or substantial interest in a project, your compensated involvement in a particular proceeding will be greatly restricted if it is one in which you "participated" while you were an agency employee. Section 87400(d) defines the term "participated" to mean "to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee."

If, as an agency employee, you had no involvement with a project, or if you only received the initial telephone call regarding a suggested project and did not take part in any substantive decisions regarding the project, you did not "participate" in the project and you are not subject to the restrictions of Sections 87401 and 87402. You are also free to appear before the Coastal Conservancy Board regarding the project.

If, as an agency employee, you had a greater involvement in a project, you must determine whether your involvement was

---

<sup>4/</sup> The term "judicial, quasi-judicial or other proceeding" means any proceeding, application, request for a ruling or other determination ... investigation ... or other particular matter involving a specific party or parties in any court or state administrative agency...."

sufficient to be considered to be "personal" and "substantial." You asked us to make this determination in the following two situations:

1. While you worked for the Coastal Conservancy, the City of Point Arena made a series of requests to the agency for aid in restoring Arena Cove for the purposes of recreation and fishing activities. You made one site visit, had several telephone calls and a meeting with local representatives, had internal discussions with agency staff and wrote internal memoranda to the Conservancy's Executive Director with recommendations about whether the agency should proceed on the situation and, if so, how. Since your departure, you believe that some project activity has occurred. It is possible that you will be hired by the City of Point Arena, the state (as a consultant to the Coastal Conservancy), or by other parties, to work on the restoration.

Point Arena's requests to the Coastal Conservancy for a restoration project for Arena Cove constitute a "judicial quasi-judicial, or other proceeding."<sup>5/</sup> While at the Conservancy, you took part "personally and substantially" in the proceeding by making an investigation, using confidential information and making formal written recommendations on whether the agency should proceed with the restoration. Therefore, with regard to this project, the provisions of Sections 87401 and 87402 apply. However, these sections specifically state that the restrictions do not apply if the entity you represent or assist is the state.

2. While you were with the Coastal Conservancy, you were the Project Manager for the restoration of the Santa Monica pier. As project manager, you helped to prepare a three-stage restoration plan. To date, the Conservancy has approved funding for the first phase and, ultimately, it plans to fund the remaining phases.<sup>6/</sup> One of the items contained in the third phase is a recreational ferry service in Santa Monica Bay. As proposed, the ferry will stop at Malibu pier, Santa Monica pier, and other spots. As project manager, you actively sought to get

---

<sup>5/</sup> The requests resulted in a single agency "project."

<sup>6/</sup> There was an interruption in the restoration of the pier because of storm damage, but the plan is, ultimately, intended to be completed.

Peter Grenell  
September 13, 1984  
Page 5

the ferry proposal into the restoration plan by gathering information, informing the public and staff, and engaging in decisionmaking. It is possible that you will be hired by either the state or the City of Santa Monica as a consultant on the pier restoration or the ferry service.

The pier restoration project is a judicial, quasi-judicial, or other proceeding. While at the Conservancy, you were extensively involved in the preparation and implementation of the pier restoration plan, which included the proposed ferry service. Therefore, with regard to proceedings involving this project, including proceedings involving just the ferry service, the restrictions of Sections 87401 and 87402 apply. However, these provisions will not apply if you represent the state in the proceeding.

My advice is confined to the provisions of the Political Reform Act. I have included some letters concerning Section 87400, et seq., which I feel will be helpful to you. If I can be of any future help to you, please feel free to contact me at (916) 322-5901.

Very truly yours,

*Janis Shank McLean*

Janis Shank McLean  
Staff Counsel  
Legal Division

JSM:plh  
Enclosures

PETER GRENEILL  
& ASSOCIATES

F P P C  
SEP 4 8 31 AM '84

August 30, 1984

Ms. Janis McLean  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, Ca. 95804

Dear Ms. McLean:

Thank you for your phone call today concerning my letter of August 8th. I hope the following provides you with what is needed to make a determination on my situation.

First, to summarize my duties and position at the State Coastal Conservancy, I held the classification of Coastal Project Development Analyst III, a senior staff position involving supervisory and substantive responsibilities. In this position, I acted as Project Manager, Program Manager, Assistant to the Executive Officer, and Acting Executive Officer at various times. As Project Manager, I was responsible for day-to-day administration of specific projects, e. g., working with the City of Santa Barbara to develop a plan and funding package to restore their municipal pier. As Program Manager, I was responsible for overall day-to-day administration of several programs, e. g., Urban Waterfront Restoration. The latter program, for example, had several projects within its purview, and I supervised other junior staff who were Project Managers as well as doing one or more projects myself. As Assistant to the Executive Officer, I handled a variety of chores, the most pertinent to your inquiry being the responsibility for Special Projects, which included those which either did not fit precisely in the agency's program categories but were still legitimate projects within the agency's enabling legislation, or which were especially complex and required extra attention. Finally, as Acting Executive Officer for several months in 1983, I was responsible for the entire agency.

Of particular concern, as I understand it, would be my activities with respect to specific projects or potential projects. I seek clarification regardless of what my specific staff position was at the Conservancy, as I was involved with projects in all the positions I held. As you mentioned in our phone conversation, the question of my level of involvement in any given situation, and whether it was "substantial" or not, is the key.

I will mention two specific situations on which I would appreciate clarification, with respect to any possible involvement I may have with them in the future, but also as general examples illustrating particular levels

4340-25th Street

San Francisco, California 94114

Telephone (415) 826-5391

# PETER GRENEILL & ASSOCIATES

of personal involvement. The first situation concerns the concept of a recreational ferry service in Santa Monica Bay, which was mentioned in the National Park Service's general plan for the Santa Monica Mountains National Recreational Area approximately three years ago. The object of this idea was to increase public access to the SMMNRA, the bulk of which is located north and west of Santa Monica above the Coast Highway. The ferry in concept would stop at Malibu, Santa Monica, and other spots farther south along the coast, thereby reducing PCH traffic as well. My involvement consisted of phone conversations (two) with the National Park Service representative, discussions with interested citizens, and with Santa Monica City staff about the idea, which Santa Monica eventually included in its restoration program and plan for fixing up its pier. This all occurred before the storms severely damaged the pier. As yet, the City, to my knowledge, has not yet finally decided whether or not to include the ferry option in its final pier restoration design. I should point out that the ferry option was never considered by anyone, including myself, as more than simply another useful activity that could make use of the restored pier, whose primary purpose was not, and would not be, as an embarcation point.

My question, then, is whether, if I am approached by either the City or by other parties, public or private, to participate on a consulting or staff basis in implementing the ferry idea --- or if I choose to initiate activity which might lead to my being involved in that way --- I would run afoul of the pertinent regulations limiting my activities as a former state civil servant. I left the Conservancy and State employ as of September 30, 1983.

The second situation concerns a series of requests from the City of Point Arena, in Mendocino County, to the Coastal Conservancy for aid in restoring Arena Cove for purposes of public recreation, commercial recreation, and fishing activities. My involvement here consisted of one site visit and meeting, several phone calls with local representatives, internal discussions with Conservancy staff, and writing internal memoranda to the Executive Officer of the Conservancy with recommendations about whether we should proceed on the situation, and if so, how. As it turned out, Conservancy staff (not myself, however) eventually had a meeting with Point Arena representatives, but to my knowledge no project activity commenced before my departure, although I believe that something may have transpired after my departure.

My question here is the same as the ferry situation. I should point out that if the Conservancy felt subsequently that I could be of assistance on a consulting basis in either of these situations, and all other proprieties and regulations were followed, these situations would probably be

4340-25th Street

San Francisco, California 94114

Telephone (415) 826-5391

PETER GRENEILL  
& ASSOCIATES

considered by the Conservancy as "new" projects, that is, they would be brought before the Conservancy Board for action for the first time.

Finally, you asked for a little more background on point (c) in my letter of August 8th. In addition to whatever is relevant in the above, I, like many Conservancy staff, handled a great many telephone requests for assistance from public agencies, local governments, nonprofit corporations, and private landowners. Typically, an initial review of such a request was aimed directly at determining whether the Conservancy could, and should, undertake a project. This review could take a few minutes or several days, and could even involve a site visit and meeting with local representatives to elicit more information before staff could intelligently reach a conclusion, whatever it might be. My item (c) refers to those situations in which my recommendation after such review was negative, that is, no project possible at that time for the Conservancy.

Obviously, it is your Commission which must decide what "substantial" involvement means in any specific situation, although I would say that the sort of initial review that I participated in of potential project situations did not constitute substantial involvement. That could only come if it was decided by the Executive Officer to proceed to develop a given project situation. I should point out for clarification that I took no such decisions to my recollection while I was Acting Executive Officer, that is, we did not start any new projects that I can recall while I held that position during the summer of 1983. To finish up, only once it was decided to proceed with a project would staff, including myself if appropriate, carry out further site investigations, economic and environmental analyses, and preparation of staff documentation for Board and local action. I have not referred to any of this activity in my communications with you, as that would, I assume, lead to possible complications as I understand the regulations.

I hope you can now reach a speedy resolution, although I'll be happy to supply you with further information if needed. I appreciate your help.

Sincerely,



Peter Grenell

4340-25th Street  
San Francisco, California 94114  
Telephone (415) 826-5391

PETER GRENELL  
4340 - 25TH STREET  
SAN FRANCISCO, CA. 94114  
(415) 826.5391

AUG 10 9 17 AM '84

August 8, 1984

Fair Political Practices Commission  
P.O. Box 807  
Sacramento, CA 95804

To whom it may concern:

I am writing you to request written advice concerning my duties and obligations as a former State civil servant with respect to undertaking future consulting work in the State. Here are the specifics of my situation:

I terminated my employment with the State Coastal Conservancy, a branch of the Resources Agency located in Oakland, as of September 30, 1983. Currently, I am exploring possibilities for working on various environmentally-related development projects in different locations in California. Specifically, might there arise a conflict of interest in any of the following possible cases:

(a) If I were to work on a project of which I had prior knowledge while still at the Conservancy, but on which I did not work (i.e., did not attend hearings, did not attend meetings, did not give advice). For example, a project the proponents of which contacted the Conservancy but not me personally.

(b) Same as (a) above, but in which I received the call but had no further involvement as the Conservancy was not subsequently involved at all.

(c) Same as (a) above, except that I was asked by Conservancy director to examine the possibility and make recommendations to him, which resulted in the Conservancy not being involved in the project, nor myself, either.

(d) If I were now to work on a new project of which neither I nor the Conservancy had prior knowledge but which might require me to appear before the Conservancy Board at public hearing; and could I so work but not appear if that appearance might represent a conflict of interest.

I hope this information is clear and sufficient for you to provide a letter of advice. Please do not hesitate to contact me if you require further information. Thank you for your attention to this matter.

Sincerely,



Peter Grenell