

March 13, 1991

John S. Leslie
JSL & Associates
55 Argonaut, Suite 220
Aliso Viejo, CA 92656

Re: Your Request for Advice
Our File No. A-91-026

Dear Mr. Leslie:

You have requested advice concerning application of the "revolving door" provisions of the Political Reform Act (the "Act") to your duties as a former employee of the California Coastal Commission. The following advice is based upon the facts provided in your letters and our telephone conversation on March 1, 1990.

QUESTION

Under the Act, may you represent Monarch Bay Resort, Inc., the applicant for a one year extension on permits, since you worked on these permits as an employee of the California Coastal Commission?

CONCLUSION

You are not prohibited from representing Monarch Bay Resort, Inc., since it is a new party applying for an extension of the permits.

FACTS

You are currently a land use consultant and work for JSL & Associates ("JSL"). As a former employee of the California Coastal Commission you were involved with a project in the Laguna Niguel area. In 1987, you were the staff analyst who prepared the staff recommendation for original approval of permits 5-87-977 through 5-87-981 for this project. The Hemmeter Corporation applied for these permits, which were approved on February 25, 1988 by the Coastal Commission. (See Leslie Advice Letter, No. I-89-649, copy enclosed.)

These permits, absent commencement of construction, were due to expire on February 25, 1990. An extension request and amendment was filed by a new applicant, Mirage Laguna Niguel, Inc., which purchased the entitlement and land from the Hemmeter Corporation. You were also the staff analyst who prepared the staff recommendation for the extension and amendment request, which was approved by the Coastal Commission on April 12, 1990.

Since the extension request, you have left the Coastal Commission and are employed by JSL & Associates. Also, Mirage Laguna Niguel, Inc. is no longer the permit holder. Mirage Laguna Niguel, Inc. was created by Quintex, which sold the property to Nippon Shimpan of Japan. The current property owner and permit holder is Monarch Bay Resort, Inc. ("Monarch"), the managing entity created by the parent owner of the property, Nippon Shimpan. Monarch desires to request a second one year extension of the permits.

ANALYSIS

Sections 87401 and 87402 describe the restrictions on the employment activities of a former state administrative official, Section 87401 states:

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 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 if both of the following apply:

- (a) The State of California is a party or has a direct and substantial interest.
- (b) The proceeding is one in which the former state administrative official participated.

Section 87402 states:

No former state administrative official, after the termination of his or her employment or term of office shall for compensation 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.

Your previous employment with the Coastal Commission makes you a former state administrative official who is subject to the restrictions of Sections 87401 and 87402. (Section 87400(b).) Therefore, you are prohibited from aiding, advising, counseling, consulting or assisting in representing any person, for compensation, in any proceeding involving specific parties in which you participated as a Coastal Commission employee.

Section 87400(c) provides that a "proceeding" is "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" (emphasis added). Therefore, the restrictions of Sections 87401 and 87402 apply only to matters involving a specific party or parties, rather than matters concerning general rules of applicability.

For purposes of Sections 87401 and 87402, you "participated" in a proceeding if you 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" as an employee of the Coastal Commission. (Section 87400(d).)

The question then, is whether you participated in any "proceeding" involving a specific party or parties which would prohibit you from advising Monarch, a client of JSL, or representing Monarch in discussions with the staff of, or before, the Coastal Commission.

A specific coastal permit application is the type of matter which is a "proceeding" for purposes of Sections 87401 and 87402, in that it affects a specific party or parties. You may not represent or assist any person or party in any aspect of a coastal permit application proceeding in which you participated as a Coastal Commission employee. However, once the final decision on a coastal permit application proceeding in which you participated has been made, you would not be prohibited from participating in new proceedings related to that same coastal permit application. (See Galanter Advice Letter, No. A-82-079, copy enclosed, for a discussion of what is, or is not, a new proceeding.)

Additionally, as a general rule, the Fair Political Practices Commission interprets the word "proceeding" as a specific permit application, including all the procedural stages involved in the application. A new permit application, even if it involves the same tract of land, or some of the same issues as the prior application, is ordinarily considered a new proceeding. (Galanter, supra.)

Monarch is now the managing entity for Nippon Shimpan, the new owner of the land in the Laguna Niguel area which is affected by the permits in question. As a Coastal Commission employee, you worked on permits 5-87-977 through 5-87-981 for this project. However, at that time, the applicants for the original permits and the subsequent extension of the permits, were the Hemmeter Corporation and Mirage Laguna Niguel, Inc. With the change in ownership of the property, the permits were transferred to Monarch, which is the applicant for the second extension of the permits. Since Monarch is a new party applying for an extension of the permits, this application for extension is deemed a new "proceeding" and, therefore, you are not prohibited from representing Monarch.

I trust this answers your question. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel

By: Jill R. Stecher
Counsel, Legal Division

SH:JRS:plh

Enclosures