



California Fair Political Practices Commission

December 22, 1994

James A. Greig
Advisor to Commissioner Eckert
California Public Utilities Board
505 Van Ness Avenue, Room 5206
San Francisco, California 94102

Re: Your Request for Informal
Assistance
Our File No. I-94-375

Dear Mr. Greig:

We write in response to your request for informal assistance concerning the application of the "revolving door" provisions of the Political Reform Act (the "Act")¹ to California Public Utilities Commissioner Patricia M. Eckert.

QUESTIONS

1. What are the prohibitions on representing third party interests before the Public Utilities Commission after Ms. Eckert leaves public service?
2. What is the definition of a "proceeding" and how does Commissioner Eckert know when a proceeding has ended?
3. Are there any special "abstention" rules for certain cases she may be voting on in these two months before she transitions back to the private sector?

CONCLUSIONS

1. Ms. Eckert may not represent a third party in any proceeding before a court or any state agency if the proceeding is one in which the State of California is a party and in which Ms. Eckert participated while in public service. This prohibition is not limited to any time period. In addition, Ms. Eckert may not represent a third party before the Public Utilities Commission for a period of one year following the expiration of her term as a

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

commissioner, regardless of whether or not she participated in the proceeding as a public official.

2. The term "proceeding" is defined by Section 87400 of the Act and is explained more fully below. However, whether or not the proceeding is completed is not relevant to the analysis of the revolving door prohibition in your case. Therefore, it is not necessary to address this portion of your question.

3. Ms. Eckert may not make, participate in making, or use her official position to influence any governmental decision directly relating to any person with whom she is negotiating, or has any arrangement concerning, prospective employment.

ANALYSIS

The California Public Utilities Commission (the "Commission") is established pursuant to Article XII, Section 1 of the California Constitution. The Commission's members are appointed by the Governor with the approval of the senate. Accordingly, Commission members qualify as state administrative officials under Section 87400 of the Act. As an administrative official, Commissioner Eckert would be bound by the "revolving door" prohibitions of the Act. The "revolving door" prohibitions of the Act are comprised of two separate and distinct provisions which seek to prevent improprieties and the appearance of improprieties associated with the employment activities of former public officials.

Proceedings In Which The Official Participated

The first restraint on a public official's private employment activities, after leaving public service, is codified in Sections 87400 through 87405. This restraint generally prevents a former public official from acting as an agent, attorney, or otherwise representing, for compensation, any other party before any court or state agency in connection with any proceeding in which the State of California is a party or has a direct and substantial interest and in which the former official participated while in public service. (Section 87401.)

The term "proceeding" is broadly defined in Section 87400(c) and would encompass all of the activities of the Public Utilities Commission which involve a specific party or parties. A proceeding includes any application, request for a ruling, request for a determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving specific parties. (Section 87400(c).)

An official has participated in a proceeding while in public service, if the official has taken part personally and substantially in a proceeding through: (1) the decisionmaking process, including the approval or disapproval of agency action with respect to the matter raised in the proceeding; (2) a formal written recommendation; (3) rendering advice on a substantial

basis; or, (4) confidential information or investigation connected with the proceeding. (Section 87401.) In addition, in past advice letters, the Fair Political Practices Commission has advised public officials that a supervisor, because of the exercise of control and oversight commensurate with the position, is deemed to have participated in any proceeding under the official's supervisory control. (Brown Advice Letter, No. A-91-033.)

In addition to the direct prohibition, the official may not, for compensation, assist, aid, counsel or consult with any other person in any proceeding in which the official's direct representation of the affected interest would be prohibited by the above restrictions. (Section 87402.) There is a limited exemption for providing testimony for which the official has special knowledge, however, such testimony may not be given for compensation. (Section 87403(a).) Additionally, statements may be made to a court or administrative agency for the sole purpose of furnishing information provided that the court or agency makes written findings that: (1) the former official has unique and otherwise unavailable qualifications; (2) the matter requires the official's unique abilities; and, (3) the public interest is served by the former official's participation. (Section 87403(b).)

The One Year Restriction

The second restriction on the private employment activities of former public officials appears in Section 87406. That proscription generally prevents a state official from acting as an agent, attorney, or otherwise representing any other person, for compensation, through any appearance or communication to the official's former agency, or any officer or employee thereof, for the purpose of influencing any administrative or legislative action, or any action or proceeding involving the issuance, amendment, award or revocation, of any permit, license, grant, contract, sale, or purchase of property.² (Section 87406(d)(1).) This restriction does not apply to judicial or quasi-judicial proceedings involving the PUC. It is valid for a period of twelve months after leaving state service and applies to any agency for which the official served in the twelve months prior to leaving state service. (Id.)

Influencing Prospective Employment

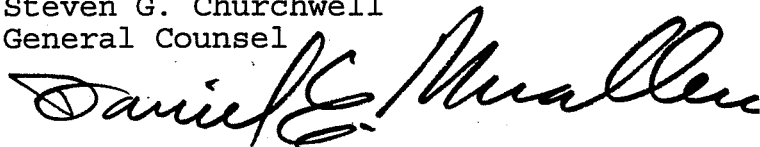
In addition to the proscriptions on employment activities after leaving government service, Commissioner Eckert is prohibited from participating in agency actions which directly affect any person with whom she is negotiating or has any arrangement concerning prospective employment. (Section 87407.)

² We enclose copies of Government Code Sections 82002 and 82037 which define legislative and administrative action.

We trust this response adequately addresses the issues you have raised. Should you have any further questions, you may contact the undersigned at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script, appearing to read "Daniel E. Muallem".

By: Daniel E. Muallem
Counsel, Legal Division

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