

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 11, 1997

Ms. Janice Ploeger Glaab
Hill & Knowlton
19800 MacArthur Blvd., Suite 950
Irvine, California 92715

**Re: Your Request for Advice
Our File No. A-97-341**

Dear Ms. Glaab:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Now that you are working for a public relations firm that is a current contractor with the Department of Health Services, are you allowed to communicate with your former agency or its departments, in the process of implementing a contract that was already in place before you left the agency? For example, are you allowed to meet with, or talk with, the Agency Secretary or staff, or with officials at the Department of Health Services, the department responsible for the contract, to plan events and other deliverables that are part of the contract?

CONCLUSION

The Act's "permanent ban" in sections 87401 and 87402 prohibits you from working at Hill and Knowlton on the same media and public awareness contract that you performed substantial work on in your position as Associate Secretary of External Affairs for the Health and Welfare Agency.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

FACTS

You were Associate Secretary of External Affairs for the Health and Welfare Agency. The Health and Welfare Agency has thirteen departments, boards, and authorities under it, including the Department of Health Services. In your position at the Health and Welfare Agency, you approved media campaigns created by contractors that were submitted by the various Health and Welfare Agency departments. You were not involved in the decision-making process regarding the choice of contractors for particular contracts. You are now employed by a public relations firm that is currently a contractor to the Department of Health Services. The firm's contract with the Department of Health Services involves media and public awareness about teen pregnancy prevention. While you had no role in choosing firms to work on this contract, you did substantial work on the contract while at the Health and Welfare Agency. You approved media campaigns submitted by contractors and planned a launch event with the Governor's office in connection with the teen pregnancy prevention campaign.

ANALYSIS

Officials who have left state service are subject to two types of restrictions under the Act. The first is a permanent prohibition on advising or representing any person for compensation in any judicial or other proceeding (including a contract) in which the official participated while in state service. The second is a one-year prohibition on making any appearance before their former agency for compensation for the purpose of influencing administrative or legislative action or any action involving contracts.

1. Permanent Prohibition

The Act contains a permanent prohibition on former state officials' involvement in certain proceedings in which they participated while working for the state. Sections 87401 and 87402 provide:

“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 87401.)

“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.” (Section 87402.)

The Health and Welfare Agency is a state administrative agency. (Section 87400(a).) Section 87400(b) defines a "state administrative official" as every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity. As Associate Secretary of External Affairs for the Health and Welfare Agency, you were considered a state administrative official.

The permanent ban is limited to judicial, quasi-judicial or other proceedings in which you participated. Section 87400 provides:

“(c) ‘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, including but not limited to any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

(d) ‘Participated’ means 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, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties.” (Emphasis added.)

Under Section 87400(c) set forth above, a "proceeding" includes any particular matter or contract involving a specific party or parties in a state administrative agency. A contract between the Department of Health Services and Hill and Knowlton, such as the media and public awareness contract regarding teen pregnancy prevention, is considered a proceeding since it involves a state agency and a specific party. (*Pratt* Advice Letter, No. A-95-386; *Hargrove* Advice Letter, No. A-93-201; and *Chalfant* Advice Letter, No. A-92-509.) As Associate Secretary of External Affairs for the Health and Welfare Agency, you are deemed to have "participated" in proceedings in which employees whom you supervised were personally and substantially involved. (*Brown* Advice Letter, No. A-91-033.)

Sections 87401 and 87402 prohibit your participation in private practice in the same proceeding which you worked on as a state employee. Thus, you are permanently prohibited from performing work for Hill and Knowlton on the media and public awareness contract regarding teen pregnancy prevention that you worked on at the Health and Welfare Agency.² You are similarly prohibited from doing any work for Hill and Knowlton on other existing contracts that you or employees whom you supervised worked on during your tenure at the Health and Welfare Agency. However, sections 87401 and 87402 do not restrict your ability to participate in *new* proceedings. To the extent that Hill and Knowlton has contracts with the Health and Welfare Agency or its departments, which you *did not* work on as an employee of the agency, or has *new* contracts with the agency, the permanent ban does not prohibit you from working on those. Under the one-year ban discussed below, however, you may not attempt to influence the Health and Welfare Agency's or its departments' awarding of contracts for a 12-month period.

2. One-Year Ban

Section 87406(d)(1) of the Act provides that:

“No designated employee of a state administrative agency ... for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, if the appearance or communication is 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.”

Pursuant to Section 87406, for one year after the date you left the Health and Welfare Agency, you may not, for compensation, act as representative or agent for any person before the Agency for the purpose of influencing³ administrative⁴ or legislative⁵ action or any action or

² The prohibition of Section 87401 applies to compensation for representation of any person other than the state of California.

³ “Influencing legislative or administrative action” includes influencing by any means, including but not limited to the provision or use of information, statistics, studies or analyses. (Section 82032.)

⁴ “Administrative action” is defined in Section 82002 as the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any

proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property. The prohibition of Section 87406 on making an appearance before the Health and Welfare Agency extends to the departments, boards, and commissions that are subject to the direction and control of the Agency. (*Perry Advice Letter*, No. A-94-004.)

For one year after you left your position at the Health and Welfare Agency, you are prohibited from making any *formal or informal appearances* before the agency or its departments to influence their action involving the issuance, amendment, awarding, or revocation of a contract. Section 87406, however, does not prohibit you from advising others in your firm regarding a new request for proposal issued by the Health and Welfare Agency or one of its departments. (*Pratt Advice Letter*, No. A-95-386, copy enclosed.) The Commission has previously advised that a former agency official could draft proposals on a client's behalf to be submitted to the agency so long as the former employee was not identified in connection with the client's efforts to influence administrative action. (*Cook Advice Letter*, No. A-95-321; *Kingma-Rymek Advice Letter*, No. A-95-141; *Miller Advice Letter*, No. I-93-098; and *Harrison Advice Letter*, No. A-92-289.)

Any communications such as telephone calls or meetings with agency staff that are intended to influence administrative or legislative action or action involving contracts are prohibited under Section 87406. However, communications to administrative agencies which are not for the purpose of influencing administrative or legislative action or action involving contracts are not restricted by Section 87406. For example, you could attend informational meetings with the Health and Welfare Agency or its departments, or request information from the agency/departments concerning existing laws, regulations, or policies, so long as you do not attempt to influence administrative or legislative action or action involving contracts. (*Bagatelos Advice Letter*, No. I-91-202.)

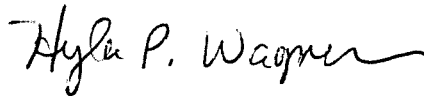
rate-making proceeding or any quasi-legislative proceeding, including any proceeding regarding adoption of regulations governed by Government Code 11340 et seq.

⁵ Section 82037 defines "legislative action" as the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his or her official capacity. "Legislative action" also means the action of the Governor in approving or vetoing any bill.

With respect to your general question as to whether there any other restrictions in the "revolving door" rules that might affect someone in your position, I have enclosed a copy of the Commission's revolving door summary for executive branch employees. If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Staff Counsel, Legal Division

Enclosure

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