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FAIR POLITICAL PRACTICES COMMISSION

August 12, 1997

James Johnson
Assistant Director
Council For Private Postsecondary And Vocational Education
1027 Tenth Street, Fourth Floor
Sacramento, California 95814-3517

**Re: Your Request for Advice
Our File No. A-97-368**

Dear Mr. Johnson:

This letter is a response to your request for advice on behalf of George Blue, Eulalie Young, Sheila Hawkins, Carlos Hernandez, Dan Lamb, Rick Mejia, Gary Nakashima, Betty Sundberg, and Charles Williams regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

How will current employees of the Council for Private Postsecondary and Vocational Education ("Council") be restricted by the post-employment provisions of the Act when the Council is eliminated?

CONCLUSION

The prohibition against "switching sides" may apply to former employees of the Council. The "one-year" ban would not apply to former employees of the agency now that the Council has "sunset," unless the agency is, in essence, re-created by July 18, 1998. Whether legislation will be passed placing the Council's activity in another agency and what exactly that will entail is very unclear. Since the Commission does not respond to hypothetical questions, we cannot conclusively answer whether the "one-year" ban may apply to certain ex-employees of the Council.

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

FACTS

You are the Assistant Director of the Council. The Council sunset on July 18, 1997. Legislation is being considered that will create a new statute and place the activity in the Department of Consumer Affairs. There is a possibility that several employees will be unemployed when the agency sunsets. One avenue of possible employment for them is to consult with schools and the new department.

ANALYSIS

Your letter concerns post-employment issues, what are colloquially known as the "revolving door" prohibition and the permanent ban on "switching sides." The Act places restrictions on individuals who have recently left state service and who wish to use the expertise and relationships they have developed at their former agency for compensation by third persons.

A. The permanent ban on "switching sides."

Public officials who leave state service are subject to two types of post-employment restrictions under the Act. The first is a permanent prohibition on influencing any judicial or other proceeding in which the official participated while in state service. (Sections 87401, 87402.) In other words, a public official may never "switch sides" in a proceeding after leaving state service. The statutes relating to this prohibition can be found in Sections 87400-87403 (copies enclosed).² The fact that the Council will sunset on July 18, 1997, will not prevent the permanent ban on "switching sides" from applying to otherwise affected individuals. Therefore, it is possible that these sections may apply to former employees of the council. If after reading the relevant sections, you have any questions regarding a specific factual context, please feel free to contact the Commission.

² I have also included an outline and explanation sheet of all the post-employment restrictions.

B. The one-year ban.

The second post-employment restriction is a one year prohibition on making any appearance before your former agency for the purpose of influencing certain kinds of agency actions. Specifically, Section 87406(d)(1) of the Act, in pertinent part, 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 . . .*” (Emphasis added.)

Because this post-employment restriction applies only to appearances before your former agency and because your former agency sunset on July 18, 1997, the “one-year” ban would not apply to former employees of the Council.

You have noted that legislation is being considered that will create a new statute and place the activity in the Department of Consumer Affairs. If this new legislation, in essence, recreates the agency within one year of July 18, 1997, then there is the possibility that the one-year ban could apply to this newly re-created agency. The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPCC Ops. 71.) Once a decision is reached, you should seek additional guidance since you have no facts regarding the proposed re-creation.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Marte Castaños
Staff Counsel, Legal Division

SGC:MC:jlw