

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

October 14, 1997

Daniel P. Marshall III
General Counsel
California Earthquake Authority
300 Capitol Mall, Suite 1230
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-97-455**

Dear Mr. Marshall:

This letter is in response to your request for advice on behalf of the California Earthquake Authority regarding the provisions of the Insurance Code.

QUESTIONS

You have requested the Commission to comment on the validity of Insurance Code section 10089.7 and to interpret specific language within that statute.

CONCLUSION

The Commission does not have authority to interpret or comment on the validity of Insurance Code section 10089.7.

FACTS

In 1995, the Legislature established the California Earthquake Authority ("CEA"). (Insurance Code §§ 10089.5 et seq.) The governing board of the CEA consists of the Governor, the Treasurer and the Insurance Commissioner. Each board member is entitled to designate an individual ("board member designee") to conduct CEA board business on his or her behalf.

Insurance Code section 10089.7(i) prohibits certain enumerated officials with the CEA from seeking employment with or consulting for certain categories of firms for a period of one year upon leaving the CEA. Specifically, Insurance Code section 10089.7(i) provides, in pertinent part, the following:

“[N]o member of the board, nor the chief financial officer, the chief executive officer, the chief operations manager and the chief counsel, shall, upon leaving the employment of the authority, seek, accept, or enter into employment or a consulting or other contractual arrangement for the period of one year with any employer or entity that entered into a participating agreement, or a reinsurance, bonding, letter of credit, or private capital markets contract with the authority during the time the employee was employed by the authority, which that member or employee had negotiated or approved or participated in negotiating. A violation of these provisions shall be subject to enforcement pursuant to Chapter 11 (commencing with Section 91000) of Title 9 of the Government Code.”

The last sentence of this provision was added by an urgency measure, Assembly Bill 2086 (Statutes of 1996, Chapter 968.) As an urgency measure, Assembly Bill 2086 was passed by 2/3 of the members in each house of the Legislature. The final form of the bill was printed on July 7, 1996. The Assembly adopted the measure on July 10, 1996. The Senate adopted the measure on July 30, 1996. The Commission did not receive a copy of the final form of the bill 12 days before it was adopted by each house of the Legislature.

ANALYSIS

The Commission May Not Comment on the Validity of Insurance Code Section 10089.7(i)

You would like to know whether the Commission finds certain provisions of Insurance Code section 10089.7 to be valid under the United States Constitution and the California Constitution as applied to certain CEA officials. Article III, section 3.5 of the California Constitution states:

- “An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:
- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
 - (b) To declare a statute unconstitutional”

Accordingly, the Commission may not comment on the validity of Insurance Code section 10089.7. (*Ashford Advice Letter, No. A-89-147.*)

The Commission May Not Interpret Insurance Code Section 10089.7

You would like the Commission to interpret specific language within Insurance Code section 10089.7. Government Code section 83111 provides the following:

“The Commission has primary responsibility for the impartial, effective administration and implementation of *this title*.”
(Emphasis added.)

“This title” refers to Title 9 of the Government Code, otherwise known as the Political Reform Act.¹ Every provision of the Political Reform Act is contained within Title 9 of the Government Code. Pursuant to section 83111, the Commission has authority to interpret only those provisions within Title 9 of the Government Code.

The Political Reform Act places various restrictions on the activities of state officials who are leaving state service. The first is a permanent prohibition on “switching sides” by 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. (Gov. Code §§ 87400-87405.) The second is a one-year “revolving door” prohibition on making any appearance before an official’s former agency for compensation for the purpose of influencing administrative or legislative action or any action involving contracts. (Gov. Code § 87406.) A third restriction is contained in Government Code section 87407, which prohibits making, participating in making, or influencing a governmental decision that directly relates to a prospective employer.

Insurance Code section 10089.7 goes further than the “revolving door” provisions of the Political Reform Act by prohibiting specified officials with the CEA from seeking employment with certain categories of firms for a period of one year after leaving the CEA. You would like the Commission to interpret this postgovernment employment ban set forth in Insurance Code section 10089.7. The last sentence of Insurance Code section 10089.7 reads, “[a] violation of these provisions shall be subject to enforcement pursuant to Chapter 11 (commencing with Section 91000) of Title 9 of the Government Code.” Chapter 11 sets forth various means by which the Political Reform Act may be enforced. You believe the enforcement language in the last sentence of this provision, which grants the Commission the authority to enforce the postgovernment employment ban contained in Insurance Code section 10089.7, also carries with it a concomitant duty, or at least option, to interpret the section. We conclude that the language at the end of the statute does not effectively grant such authority. Insurance Code section 10089.7 is not within Title 9 of the Government Code and restricts conduct that is not currently regulated under the “revolving door” provisions of the Political Reform Act; therefore, the Commission does not have jurisdiction to give advice regarding that section.

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

Amendments to the PRA Must Comply with Government Code Section 81012

Government Code section 81012 specifies the procedures required to amend or repeal provisions of the Political Reform Act. Section 81012(a) provides:


“This title may be amended to further its purposes by statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, if at least 12 days prior to the passage in each house the bill in its final form has been delivered to the Commission for distribution to the news media and to every person who has requested the Commission to send copies of such bills to him or her.”

Amendments to the Political Reform Act must comply with the requirements set forth above. Assembly Bill 2086 (Statutes of 1996, Chapter 968), which amended Insurance Code section 10089.7, was not adopted in accordance with the notice requirements of Government Code section 81012. We perceive this as further evidence that the Legislature did not intend to amend any provision of the Political Reform Act.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Julia Butcher
Graduate Legal Assistant, Legal Division

SGC:JB:jlw