



FAIR POLITICAL PRACTICES COMMISSION

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March 20, 1998

Rebecca A. Parker, PhD
Education Consultant
2550 Sycamore Lane, Suite 6H
Davis, California 95616

Re: Your Request for Advice
Our File No. A-98-031

Dear Ms. Parker:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ The Commission does not act as the finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. How does the revolving door prohibition of Section 87406 affect your potential employment as an evaluator of the "Schoolwide Schools" program for a local government agency?
2. How does the revolving door prohibition of Section 87406 affect your potential employment as an evaluator of the "Even Start" program for a local government agency?

CONCLUSIONS

1. Based on the facts presented to us, Section 87406 does not limit your ability to serve as an evaluator of the Schoolwide Schools program for a local government agency. See Analysis below.
2. Based on the facts presented to us, Section 87406 does not limit your ability to serve as an evaluator of the Even Start program for a local government agency. See Analysis below.

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

FACTS

You are a former contract consultant for the California Department of Education ("CDE"), assigned to the Migrant Education Office. As a contract consultant you were a "designated employee" for purposes of the CDE's conflict of interest code. You left your position with the CDE in August of 1997. Your former position with the CDE was at the lowest level in its hierarchy (position 'A' on the organizational chart you have provided).

You have two opportunities to evaluate education programs that are administered through local educational agencies, counties, or districts. In both instances, the local educational agency that administers the program would be your employer. To date, you have not accepted any paid work from either local agency.

In the first program, the "Schoolwide Schools" program, local programs are approved at the federal level, which is also the source of funding. The CDE does provide technical support. (See "Improving America's Schools Act".) The evaluations that you would provide would give information to the local programs' regional directors, generally staff of county offices of education, about ways to strengthen the program and improve its benefits to students. The CDE individual who coordinates the statewide technical support efforts (position 'B' on the organizational chart you have provided) would eventually review the evaluation reports, but would not be in a position to approve or disapprove program funding or continued operation. Rather, the reports would be used to tailor technical support to the needs of the local agencies. Specifically, the CDE would use the information in the report for background for future efforts by local agencies involving the Schoolwide Schools program.

In the second program, the "Even Start" program, local programs are approved for federal funding by the CDE Even Start Office. States are allocated funds by the United States Department of Education ("USDE") based on their counts of impoverished children. The state education agencies subgrant those funds based on the completeness and quality of proposals developed by the local agencies. CDE staff have the authority to discontinue funding in the event a local program does not make adequate progress towards meeting its objectives.

Originally, you stated that a CDE employee would review your evaluation reports regarding the Even Start program. However, on March 9, 1998, you wrote to correct your original statement of the facts. You now state that your role as an evaluator of the Even Start program will be to report back to the local project director and that none of your written or oral work would be transmitted to the CDE. Any information, e.g., the executive summary, required of the local director by the CDE will be written by the local project director and not by you. In addition, as an evaluator, you would not have the data required to perform evaluation analyses until the proposal for continued funding has already been submitted to the CDE. Further, your prior role with the CDE did not provide you information, connections, or influence relative to the Even Start program.

ANALYSIS

Introduction

Your letter concerns the one year revolving door prohibition found in Section 87406(d)(1). This section was added to restrict individuals who have left state service from capitalizing on the expertise and relationships they developed at their former agency for a period of one year.²

Section 87406(d)(1) of the Act provides, in pertinent part, that no officer or designated employee of a state administrative agency:

“[F]or 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.”

You write to know whether Section 87406(d)(1) affects your ability to accept compensation from a local government agency for serving as a program evaluator of the Schoolwide Schools program or the Even Start program.

Generally, a designated employee's state administrative agency means the agency for which he or she worked, or any board or commission under the agency's control. (*Grimm* Advice Letter, No. I-96-114; *Gould* Advice Letter, No. A-96-077.) You were a designated employee of the CDE. Also, you have not provided any information that suggests that the Migrant Education Office or the divisions or branches of the CDE over the Migrant Education Office are statutorily independent from the CDE or any division or branch of the CDE. Therefore, your former state agency is the entire CDE. (*Sandoval* Advice Letter, No. A-97-617; *Wallace* Advice Letter, No. A-96-196; *Monagan* Advice Letter, No. A-93-473; *Grimm* Advice Letter, *supra*.)

² The permanent ban of Sections 87401 and 87402 clearly does not apply to either of your job opportunities discussed since you did not participate in either of the two programs at all during your employment with the CDE.

Under Section 87406(d)(1), representation must be for compensation in connection with representation of another person. (*Reames* Advice Letter, No. I-91-289; *Simonian* Advice Letter, No. I-94-001.) This definition of person has been construed to include public agencies, including local government agencies. (*In re Witt* (1975) 1 FPPC Ops. 1; *Parker* Advice Letter, *supra*; *Evans* Advice Letter, No. I-86-117.)

Therefore, you may not serve as a program evaluator for a local government agency if that position would entail making any appearance or communication with the CDE if the appearance or communication is 1) made for the purpose of influencing³ administrative⁴ or legislative⁵ action, or 2) 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.

The Act's definition of administrative action focuses on the quasi-legislative aspect of agency action. Thus, you may not, for one year from the date you left state service, communicate with the CDE for the purpose of influencing rulemaking-type activity on behalf of either of your prospective local government agency clients. Based upon the facts presented in your letter, it appears unlikely that Section 87406's prohibition regarding administrative or legislative action is particularly relevant to either of your potential employment opportunities. You should, however, keep it in mind if the situation should change.

Whether either of your employment opportunities entail making an appearance or communication for the purpose of "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" is a closer question.

However, it appears that the CDE does not determine whether your local government agency would receive Schoolwide Schools funds. Instead, the CDE merely provides technical support, i.e., background for future efforts related to the Schoolwide Schools program. Therefore, under these facts, an evaluation written by you and presented to the CDE would not be

³ Section 82032 defines "influencing legislative or administrative action" as promoting, supporting, influencing, modifying, opposing or delaying any legislative action by any means, including but not limited to the provision or use of information, statistics, or analyses. (Section 82032.)

⁴ Section 82002 defines "administrative action" as the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding.

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 a bill.

a communication made for the purpose of influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a grant and is not prohibited by Section 87406(d)(1).

The CDE does determine whether your potential employer would receive Even Start funds. However, your employment opportunity involving the Even Start program, according to the updated facts, will not entail making an appearance or communication for the purpose of 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, since you will not be making any appearance before the CDE. Therefore, Section 87406 does not limit your ability to serve as an evaluator of the Event Start program for a local government agency.

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

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