



FAIR POLITICAL PRACTICES COMMISSION

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March 21, 2001

James P. Gazdecki
665C Del Parque
Santa Barbara, CA 93103

**Re: Your Request for Informal Assistance
Our File No. I-01-061**

Dear Mr. Gazdecki:

This is in reply to your request for advice concerning the "revolving door" provisions of the Political Reform Act (the "Act").¹ Your question is general in nature and does not relate to a specific governmental decision. Therefore, we are treating your request as one for informal assistance. (Regulation 18329(b)(8).) Informal assistance does not provide the requestor with the immunity conferred by formal written advice. (Regulation 18329(c)(3).)

QUESTION

What, if any, restrictions apply to your representation of clients before the California Occupational Safety and Health Appeals Board (the "Appeals Board")?

CONCLUSION

You may not, for compensation, represent any client before the Appeals Board *in any proceeding in which you participated* during your employment with the Appeals Board.

¹ Government Code Sections 81000 – 91014. Commission regulations appear at Title 2, Sections 18109-18996, of the California Code of Regulations.

FACTS

You are an attorney licensed to practice in California and Michigan. On March 15, 2000, you completed a term as Chairman of California's Occupational Safety & Health Appeals Board. Since that time, you have avoided handling any OSHA-related matters to avoid even the appearance of impropriety. Now that the one-year ban on influencing your former agency has passed, you are looking at, among other things, possibly handling some OSHA-related matters as an attorney, as well as providing counsel and expert witness testimony about such matters.

ANALYSIS

Lifetime Ban

Sections 87400-87404 generally prohibit former state administrative officials from being compensated to represent or aid in the representation of another person before any court or state administrative agency in connection with any proceeding in which the official participated while employed by the State.² Specifically, Section 87401 states:

“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.”

Furthermore, Section 87402 states:

“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

² You were also prohibited, for a period of one year, from appearing before or communicating with the Appeals Board, or any employee thereof, for the purpose of influencing any legislative action or 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 noted in your letter that the one-year period has passed.

of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.”

Thus, to the extent that you, in your capacity as a member of the Appeals Board, participated³ in particular board proceedings,⁴ you cannot, after leaving the Board, represent or aid in the representation of clients in connection with any of these proceedings. To the extent that the same proceedings are before any other division of Cal-OSHA⁵ or any court or other state administrative agency, you likewise cannot represent clients in those proceedings.

You will note that the prohibition consists of several essential elements. They are:

1. Representing another person, or aiding, advising, counseling, consulting or assisting any other person in the proceeding;
2. Before a court or administrative agency;
3. For compensation;
4. In a judicial, quasi-judicial or other proceeding;
5. Where the proceeding is one in which you participated; and,
6. The state is a party or has a direct and substantial interest.

Thus, where one or more of the elements do not exist, the prohibition will not apply. For example, the “revolving door” provisions will not affect any work you perform without compensation. Moreover, work you perform for compensation will not be impacted so long as the state is not a party and the state does not have a direct and substantial interest. Similarly, the prohibition will not apply to your representation of clients in proceedings in which you did not participate as a state administrative official.

³ Section 87400(d) defines “participated” to mean “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.” (See also, *In re Lucas* (2000) 14 FPPC Ops. 14; No. O-00-157, enclosed.)

⁴ Section 87400(c) includes in the agency proceedings covered by these restrictions the following: “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.”

⁵ See generally, *Monagan* Advice Letter, No. A-93-473.

New Proceedings

Under Section 87400(c), a "proceeding" includes any particular matter involving a specific party or parties in a state administrative agency. Proceedings that are regulatory or general in nature do not constitute a "proceeding" for purposes of Section 87401 since there is no specific party involved. (*Chalfant* Advice Letter, No. A-92-509.) Sections 87401 and 87402 do not restrict an ex-employee's ability to participate in new proceedings. (*Leslie* Advice Letter, No. I-89-649.) We regard as "new" a proceeding involving different parties, or different factual or legal issues from those considered in previous proceedings. (*Grimm* Advice Letter, No. A-99-086.)

We have also advised that where a proceeding changes to such an extent that there must be a reapplication or amendment to the proceeding (*Cohelan* Advice Letter, No. A-85-175), or subsequent portions of the proceeding involve different facts and issues (*Witz* Advice Letter, No. A-88-382; *Galanter* Advice Letter, No. A-82-079), the revolving door restrictions would not apply.

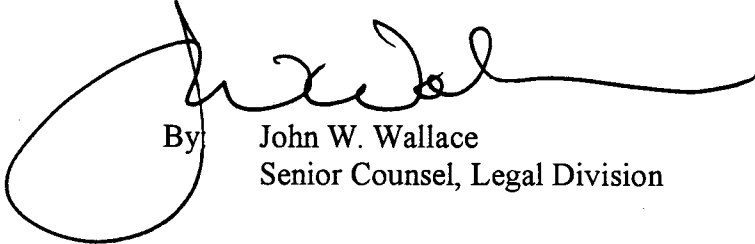
However, what constitutes the same or different "proceeding" for purposes of these restrictions must be analyzed on a case-by-case basis. Therefore, we cannot provide you with more detail on this question until there is a specific proceeding to analyze.

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

Sincerely,

Luisa Menchaca
General Counsel

By



John W. Wallace
Senior Counsel, Legal Division

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Enclosure