



FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807
(916) 322-5660 • Fax (916) 322-0886

February 11, 2002

Carl Washington, Assemblyman
Fifty-second District
California Legislature
Post Office Box 942849
Sacramento, CA 94249-0001

**Re: Your Request for Advice
Our File No. A-02-034**

Dear Assemblyman Washington:

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

QUESTION

Does the Act prohibit or limit you in any way from voting on or otherwise participating in legislation, which may have a financial impact on a California community college that has offered you employment after you vacate your office in December of this year?

CONCLUSION

No. Section 87407 of the Act prohibits a state officer or employee who has an arrangement concerning prospective employment with an entity, from making a governmental decision that will directly affect that entity. However, regulation 18747(d)(3) specifically states that that prohibition does not apply if the prospective employer is a state, local, or federal government agency. Your prospective employer, a California community college, is a state agency and therefore the prohibition does not apply.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FACTS

You are a member of the Assembly and, due to term limits, will be vacating your office in December of this year. You have been offered employment by a California community college, but the employment (and any income related thereto) will not begin until after the date you have left your Assembly office.

The position you have been offered is executive-vice president of institutional affairs at the community college. In that position you would be responsible for the operation of the college's foundation and alumni association; overseeing grant proposals and governmental relations; creating and implementing collaborative programs with private sector and governmental entities; and establishing an endowment fund for the district. In this position you would work for the community college and be an employee of the state.

You anticipate that several items of legislation will come before the Assembly this year, including the state budget bill, that will have a financial impact on California community colleges generally, and perhaps specifically, on the community college from which you have the offer of employment.

ANALYSIS

The Act has two employment-related restrictions that apply to state Legislators:

- restrictions on a state official or employee who is negotiating prospective employment (section 87407); and
- a "one-year ban" prohibiting a state official or employee from communicating with his or her former agency to influence the agency's administrative or legislative action (section 87406).²

We discuss the applicability of these provisions to your situation.

A. Negotiating Prospective Employment. The Act and regulations contemplate that a public official may negotiate and accept an offer of future employment before leaving his or her current state position. However, section 87407 is designed to ensure that the official does not use his or her state government position to make any decisions that unduly benefit the firm that is hiring the official. Section 87407 states:

"No state administrative official, elected state officer, or designated employee of the Legislature shall make, participate in making, or use his or her official position to influence, any governmental decision directly

² The "permanent ban" barring a state official or employee from "switching sides" in any specific proceeding between two parties that the employee worked on while in state service (sections 87400-87405) does not apply to state legislators. A legislator's work does not involve judicial, quasi-judicial, or other proceedings between two specific parties and thus, the Legislature is excluded from the definition of "state administrative agency" in section 87400(a).

relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment.”

A public official is considered to be “negotiating” employment “when he or she interviews or discusses an offer of employment with an employer or his or her agent.” (Reg. 18747(c)(1).) An official has an “arrangement” concerning prospective employment when he or she accepts an offer of employment. (Reg. 18747(c)(2).) As you have described, you are negotiating or have an arrangement concerning prospective employment with a California community college.

However, regulation 18747(d)(3) specifically states that the prohibitions of section 87407 do not apply if “[t]he prospective employer is a state, local, or federal governmental agency.” The same concerns about a state official using his or her governmental position to benefit a business or firm that the official is about to join are not present when the official’s prospective employer is another federal, state, or local governmental agency.

California community colleges are state governmental agencies. Because the position you have been offered is with another state governmental agency, the prohibition of section 87407 does not apply. Thus, during this year’s legislative session, you are not restricted from voting or otherwise participating in legislation that may have a financial impact on California community colleges generally, or specifically on the community college that has offered you employment.

B. One-Year Ban. The Milton Marks Postgovernmental Employment Restrictions Act provides in section 87406(b):

“No Member of the Legislature, for a period of one year after leaving office, 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 the Legislature, any committee or subcommittee thereof, any present Member of the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action.”

This provision prohibits a legislator from lobbying the state Legislature for a year following his or her departure. Here too, however, there is an exception that applies if a member of the state Legislature leaves to work for a state agency, board or commission. Section 87406(e) provides:

“The prohibitions contained in subdivisions (b), (c), and (d) shall not apply to any individual subject to this section who is or becomes any of the following:

(1) An officer or employee of another state agency, board, or commission if the appearance or communication is for the purpose of

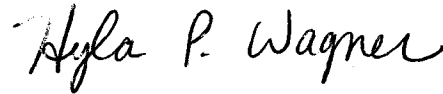
influencing legislative or administrative action on behalf of the state agency, board, or commission.”

Therefore, if you work for a California community college following your service in the Legislature, the Act will not restrict you from lobbying the state Legislature, committees, members or staff, on behalf of the California community college.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

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