



## FAIR POLITICAL PRACTICES COMMISSION

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April 12, 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-02-034a**

Dear Assemblyman Washington:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter replaces Advice Letter, No. A-02-034 issued to you on February 11, 2002. This letter further addresses whether community college districts are considered local or state agencies for purposes of the revolving door provisions of the Act. The analysis does not alter our conclusion under section 87407, but does affect the application to you of the one-year ban on lobbying the Legislature, as discussed below.

### 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

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. Our advice is limited to provisions of the Political Reform Act. You have received advice from the Office of the Attorney General about how provisions of the Legislative Code of Ethics, the California Constitution, and Government Code Section 1090 may affect your situation.

employer is a state, local, or federal government agency. Your prospective employer, the Compton Community College District, is considered a local government agency under section 82041 of the Act and therefore the prohibition of section 87407 does not apply. However, the one-year ban on lobbying the Legislature contained in section 87406 of the Act will apply to you when you leave the Legislature and start working for the Compton Community College District.

### 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 the Compton Community College District, 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 with the Compton Community College District. 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 will work for the community college and be an employee of the Compton Community College District.

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 Compton Community College District from which you have the offer of employment.

### ANALYSIS

**A. Section 87407: 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 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 the Compton Community College District.

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.

Section 82041 of the Act defines a local government agency as follows:

“‘Local government agency’ means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.”

Our prior letter stated that community colleges were state agencies. Upon review, we note that community college districts are a type of local school district within the Act’s definition of a local governmental agency. Past advice under the Act as well as the Fair Political Practices Commission’s code filing process reflects this determination.<sup>2</sup> (See, e.g., *Donato* Advice Letter, No. A-96-308; *Willis* Advice Letter, No. I-95-270; *Elliott* Advice Letter, No. I-90-197; and *Martinez* Advice Letter, No. I-88-473.)<sup>3</sup>

The statutes governing community colleges also support this conclusion. In 1988, the Legislature enacted a comprehensive statutory scheme, the Walter Stiern Act, concerning the organization and administration of the California Community College system. (Education Code sections 70900-82548.) The statewide Board of Governors of the California Community Colleges provides leadership and direction in the development of the community college system. (Education Code section 70901.) The responsibilities of the statewide Board of Governors include providing general supervision over

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<sup>2</sup> Under the Act, government agencies in California must adopt a conflict-of-interest code designating employees who make governmental decisions. These designated employees are required to file annual disclosure of their economic interests. State agencies and multi-county agencies file copies of their conflict-of-interest codes with the Fair Political Practices Commission, whereas local government agencies file copies of their codes with their county board of supervisors or other local code reviewing body. With respect to community colleges, the Board of Governors and Chancellor’s Office are state agencies that file their conflict of interest codes with the Fair Political Practices Commission. Community college districts, on the other hand, are local government agencies that file their codes with their local board of supervisors or local code reviewing body. (Community college districts that cover more than one county file their codes with the Commission as multi-county agencies do.)

<sup>3</sup> Commission advice has considered on a case-by-case basis whether an auxiliary foundation formed by a community college is a local government agency under the Act (see *Stone* Advice Letter, No. A-97-630, finding that the Butte Community College Foundation was not a local government agency under the Act; and *Francis* Advice Letter, No. A-86-214, concluding that the Feather River College Foundation Board was). Under the facts you have presented, however, you will be an employee of the Compton Community College District itself.

community college districts, issuing regulations, and appointing a chief executive officer, the Chancellor of the California Community Colleges, to perform duties delegated by the board. (Education Code sections 70901 and 70901.5.)

The individual community college districts, however, are formed and administered locally. Education Code section 70901(a) states that “[t]he work of the board of governors shall at all times be directed to maintaining and continuing, to the maximum degree permissible, local authority and control in the administration of the California Community Colleges.” Every community college district is under the control of a local board of trustees. (Education Code section 70902.) The board of trustees of each district sets the academic and facilities plans, approves the courses of instruction, establishes academic standards and employs personnel for the community colleges within its district. (Education Code section 70902.) In addition, the formation of new community college districts is a local process. (Education Code sections 72020 et seq.)

Thus, while there is statewide coordination and control of the California Community College system through the statewide Board of Governors and the Chancellor’s Office, the individual community college districts are formed and operated locally and are considered local government agencies under the Act. Because the position you have been offered with the Compton Community College District is with a local governmental agency, the prohibition of section 87407 does not apply. Thus, this prohibition does not restrict you from voting or otherwise participating in legislation that may have a financial impact on California community colleges generally, or on Compton Community College. Other provisions of the Act, however, may affect your situation.

**B. Legislative Conflicts of Interest.** Although not discussed in our prior letter, there is a slight possibility that sections 87102.5 - 87102.6 (copy enclosed), setting forth conflict-of-interest provisions for members of the Legislature, could affect your action during the remainder of your term in office. It is not likely, however, that these provisions will apply under your facts for several reasons. First, these sections apply when a legislator has a “financial interest” in a decision. Your future salary from the Compton Community College District is at issue here. You have not yet received any salary from the district, but have an arrangement concerning future employment. Section 87103(c) of the Act provides that, among other things, a public official may have a “financial interest” in “[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, received by, the public official within 12 months prior to the time when the decision is made.” However, the Act’s definition of income in section 82030(b)(2) exempts “[s]alary and reimbursement for expenses or per diem received from a state, local, or federal government agency.” Salary from the Compton Community College District would constitute income from a local government agency which is exempt from the Act’s definition of income under section 82030(b)(2).

Second, the legislative conflicts-of-interest provisions apply to action on “nongeneral legislation” as defined in section 87102.6. “Nongeneral legislation” is defined as legislation which will have a direct and significant impact on one or more identifiable persons (including businesses) or one or more identifiable pieces of real

property, and will not similarly affect an industry, trade or profession, any recognized subgroup or specialty within an industry, trade or profession, the population of any district, city or county, or more than a small number of persons or property. (Section 87102.6.) If the effect will be similar on any of the groups listed, the legislation is not "nongeneral legislation" and is not subject to Section 87102.5. For example, legislation that affects all or many community colleges would not be nongeneral legislation. (Section 87102.6(b)(5).) In addition, the budget bill as a whole is not nongeneral legislation. (Section 87102.6(a)(7).)

Thus, it is not likely that your future salary from the Compton Community College District will constitute a financial interest of yours giving rise to a conflict under section 87102.5. However, should you be faced with a specific bill or a provision of a bill that has a direct and significant financial impact only on the Compton Community College District or on a small number of community colleges including Compton Community College, you should seek further advice from the Commission before participating in decisions concerning that legislation.

**C. One-Year Lobbying Ban.** Lastly, following your departure from the Legislature the one-year lobbying ban will apply. 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."

Section 87406 further provides:

"(e) 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.

(2) An official holding an elective office of a local government agency if the appearance or communication is for the purpose of influencing legislative administrative action on behalf of the local government agency."

Section 87406(b) prohibits a legislator from lobbying the state Legislature for a year following his or her departure. The exception in subdivision (e) will not apply to you because you will not be working for another state agency or holding an elective

office of a local government agency. Therefore, when you work for the Compton Community College District following your service in the Legislature, section 87406(b) of the Act will prohibit you from lobbying the state Legislature, committees, subcommittees, members or staff, on behalf of the college for a period of one year.

“Influencing legislative or administrative action” includes influencing by any means, including but not limited to the provision or use of information, statistics, or analyses. (Section 82032.) 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 official capacity.” “Legislative action” also means the action of the Governor in approving or vetoing a bill.

Communications restricted by the one-year ban include any formal or informal appearance or oral or written communication made to influence legislative action. (Section 87406(d)(1).) These communications include, but are not limited to, conversing directly or by telephone, corresponding by writing or e-mail, attending a meeting, and delivering or sending any communication. (Reg. 18746.2(a).) A communication is considered to be for the purpose of influencing legislative action “if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action....” (Reg. 18746.2(a).)

Note that the Act's definitions of the terms “legislative action” and “influencing legislative action” are broad. (*Craven* Advice Letter, No. A-93-057.) In the *Isenberg* Advice Letter, No. A-97-482, we advised that any discussion with a state legislator or legislative staff or communication that the former legislator knew or had reason to know would be transmitted to the aforementioned on proposed legislation or amendments to current legislation, would be considered for the purpose of “influencing legislative action” and might place him in violation of section 87406. In that letter we advised that “influencing legislative action” would include providing information to a legislative committee for the compilation of a committee report.

However, communications that are not for the purpose of influencing legislative action are not restricted under the one-year ban. It is not considered a prohibited communication under the one-year ban, if an individual:

- “(1) Participates as a panelist or formal speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;
- (2) Attends a general informational meeting, seminar, or similar event;
- (3) Requests information concerning any matter of public record; or
- (4) Communicates with the press.” (Reg. 18746.2(b)(1)-(4).)

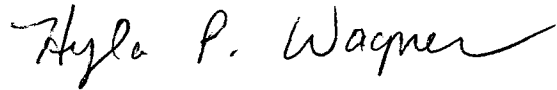
Thus, the one-year ban does not prevent you from requesting information generally available to the public from the Legislature. In addition, social conversations

with members or employees of the Legislature, not intended to influence legislation, are not prohibited by the ban. (*Tobias* Advice Letter, No. I-96-089.) Further, the one-year ban of section 87406(b) on lobbying the Legislature does not apply to lobbying activities before other state or local government agencies. (*Hansen* Advice Letter, No. A-92-599.)

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

Enclosures

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