



FAIR POLITICAL PRACTICES COMMISSION

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November 14, 2003

Kerry Mazzoni
State of California
Office of the Secretary for Education
1121 L Street, Suite 600
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-03-250**

Dear Ms. Mazzoni:

This letter is in response to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the "Act").¹ Please note that the advice contained herein is limited to the provisions of the Act, and does not analyze potential restrictions under any other area of law.

QUESTION

Would representing a University of California campus before the Governor or executive branch be prohibited by the "revolving door" provisions or permanent ban of the Act?

CONCLUSION

The "revolving door" provisions and permanent ban of the Act do not restrict your interaction with the Governor's office or the executive branch, so long as you are employed by the University of California and are representing the interests of the University of California.

FACTS

You are currently an appointed cabinet member for Governor Davis. According to the facts you provided in connection with your prior request for advice, *Mazzoni* Advice Letter, No. A-03-066, you are currently serving as a senior advisor to the

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

Governor as the Secretary for Education. The Office of the Secretary is under the umbrella of the Office of Planning and Research. Your position, Senior Advisor to the Governor, is in the Governor's conflict of interest code as a designated employee and the Office of Planning and Research does not have a code independent of the Governor's office.

You request advice as to whether employment at a University of California campus (after you leave your cabinet post) in a governmental relations capacity which would include representing the university before the executive branch, would be prohibited under the "revolving door" provisions of the Act. In our telephone conversation of November 4, 2003, you confirmed that the prospective position with the university would not be as a registered lobbyist.

ANALYSIS

We previously advised you generally regarding the "revolving door" provisions of the Act in the *Mazzoni* Advice Letter, No. A-03-066. As we advised, the Act places certain restrictions on individuals who have recently left state service and who wish to use the expertise and relationships they developed at their former agency for compensation by third persons.

A. The permanent ban on "switching sides."

Public officials who leave state service are subject to two types of post-employment restrictions under the Act. The first is a permanent prohibition on influencing any judicial or other proceeding in which the official participated while in state service. (Sections 87401 and 87402.) In other words, a public official may never "switch sides" in a proceeding after leaving state service.

Sections 87401 and 87402 provide:

"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^[2] if both of the following apply:

"(a) The State of California is a party or has a direct and

² Section 87400(c) defines "judicial, quasi-judicial or other proceeding" to include: "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."

substantial interest.

“(b) The proceeding is one in which the former state administrative official participated.” (Section 87401.)

“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 of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.” (Section 87402.)

You ask about contacting your former agency on behalf of a University of California campus. As an employee of the University of California employed to represent the university before the Governor’s office, you would be acting as an agent of a state agency³ and therefore sections 87401 and 87402, by their terms, would not apply.

B. The One-Year Ban

In addition to the permanent ban discussed above, the Act prohibits specified officials, for a period of one year after leaving state service, from being paid to communicate with or appear before their former agency “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.” (Section 87406(d)(1).) Sections 87406(d)(1) and (d)(2) of the Act provide, in pertinent part;

“(d)(1) No designated employee of a state administrative agency, any officer, employee, or consultant of a state administrative agency who holds a position which entails the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, and no member of a state administrative agency, for 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. For purposes of this paragraph, an appearance before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Workers’

³ “State agency” is defined in section 82049. State public colleges and universities are state agencies for purposes of the Act.

Compensation Appeals Board. The prohibition of this paragraph shall only apply to designated employees employed by a state administrative agency on or after January 7, 1991.

“(2) For purposes of paragraph (1), a state administrative agency of a designated employee of the Governor’s office includes any state administrative agency subject to the direction and control of the Governor.”

As a cabinet level officer, you presumably are a designated employee. Therefore, sections 87406(d)(1) and (d)(2) are applicable to you. (See, also, section 82019(c); regulation 18746.1(a)(2).) As we advised you previously, this ban applies to communications to any state administrative agency subject to the direction and control of the Governor. However, section 87406(e) provides in pertinent part:

“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.”

Thus, pursuant to this section, the one year ban would not apply to your prospective position with the University of California campus.

C. Ban on influencing prospective employment

“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.”⁴ (Section 87407.)

However, regulation 18747(d) provides in pertinent part:

“Notwithstanding subdivision (a), the prohibitions of Government Code Section 87407 do not apply if:

¶...¶

“(3) The prospective employer is a state, local, or federal governmental agency.”

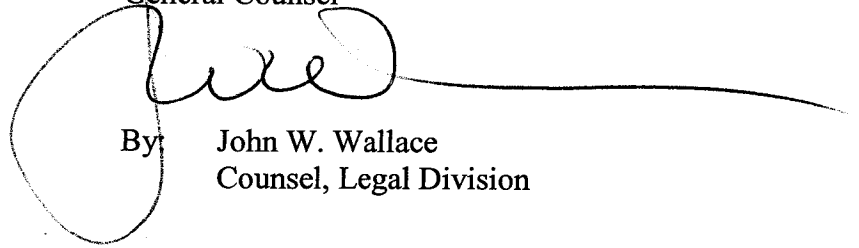
⁴ Effective January 1, 2004, this section has been amended to apply to all public officials, state and local.

Thus again, this section would not apply if your prospective employment is with a state agency.

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

Sincerely,

Luisa Menchaca
General Counsel

A handwritten signature in black ink, appearing to read "J. Wallace", with a long horizontal line extending to the right. The signature is written over the printed name of John W. Wallace.

By John W. Wallace
Counsel, Legal Division

JWW:jg
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