



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

January 29, 2007

Alice B. Jempsa
11344 Rochelle Street
Los Alamitos, California 90720

**RE: Your Request for Informal Assistance
Our File No. I-06-229**

Dear Ms. Jempsa:

This letter is in response to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the "Act").¹ Because you have not provided any facts related to a specific appearance before or communication with your previous government agency employer, we are treating your request as one for informal assistance.² This letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Do the post-governmental employment provisions of the Act prohibit you from contacting public schools and libraries throughout California to promote and sell a book you have authored and published?

CONCLUSION

No. Based upon the facts provided, the Act's post-governmental employment provisions will not apply to your appearances and communications to promote and sell a book you have authored and published.

¹ Government Code sections 81000-1014. Commission regulations appear at title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c), copy enclosed.)

FACTS

You were an elected member of the Los Alamitos City Council. You left this office on December 5, 2006. You have authored a children's book and wish to sell this book to public schools and libraries in Orange County as well as other areas of California.

In telephone conversations on December 26, 2006, and January 5, 2007, you stated that during your term as a city council member you served as the city's designated representative on the Orange County Public Library Board (the "Library Board") and the Orange County Vector Control District Board of Trustees (the "Vector Control Board"). While you have left your positions with the city council and the Library Board, you have retained your position with the Vector Control Board.

You further provided that the Los Alamitos Library is a branch of the Orange County Public Library and not subject to the direction and control of the City of Los Alamitos. As a member of the Library Board, you participated in general policy decisions pertaining to the library such as the expansion of the library and the use of books published over the Internet. However, you stated that you played no role in library decisions to purchase books.

In reference to the book you have authored, you stated that you have retained all rights to the book and will be selling the book as a sole proprietor. You further stated that during your terms as a city council member and a library board member you were not involved in any proceedings related to your book.

ANALYSIS

Local governmental officials who leave governmental service are subject to the Act's one-year ban for local officials in section 87406.3. Generally, this restriction prohibits certain former local officials from communicating, for compensation, with his or her former agency for the purpose of influencing any legislative or administrative actions including quasi-legislative and quasi-judicial actions. (See section 87406.3.)

The one-year ban of section 87406.3 applies to certain employees or officers of local governmental agencies including locally elected officers, chief administrative officers of counties, city managers, and general managers or chief administrators of special districts. (Section 87406.3(a).) As an elected city council member, you held an office potentially subject to the ban of section 87406.3.

Section 87406.3 provides that the one-year ban will apply to an official leaving a specified position after the official has left that office or employment. As interpreted by regulation 18746.3(b)(1) an official has not left his or her office or employment until the official has "permanently left local governmental service or is on a leave of absence."

The pertinent question is whether you have “permanently left local government service” considering you have retained your board position with Vector Control Board. While we have not yet had the occasion to interpret regulation 18746.3(b)(1) with respect to this issue, we have determined that a state employee who had retained employment with another state agency had not “permanently left state employment” as required by regulation 18741.1 for the purposes of the postgovernmental employment provision of section 87401 and 87402. (*Churchwell* Advice Letter, No. A-04-063.) Accordingly, as we currently construe regulation 18746.3, you would not be subject to the one-year ban in section 87406.3 as you have retained a position with the Vector Control Board and have not “permanently left local governmental service.”

While we currently construe regulation 18746.3 to require that an official permanently leave local government service for the one-year ban to apply, it is anticipated that the Commission will be reviewing this issue at its February 2007 Commission Meeting. Specifically, the Commission will examine whether the one-year ban of section 87406.3 applies upon an official permanently leaving the position or office that subjected the official to the ban, or whether the ban applies only after an official permanently leaves local government service. In light of the fact that the Commission will soon be reviewing regulation 18746.3 to reexamine whether section 87406.3 applies upon an official leaving the position or office that subjected the official to the ban, it would be prudent to continue our analysis of the one-year ban to determine if an exception applies.

In terms of appearances before or communication with the Library Board (including the libraries within the Library Board’s jurisdiction) and the Vector Control Board, and under the assumption that the one-year ban applies to your particular circumstances (despite the fact you have not permanently left local government service), section 87406.3 provides only that a local elected official shall not make an appearance or communication, for compensation and in representation of another person, before or with “that local government agency.” While your appearances before and communications with the Los Alamitos City Council and other agencies whose budget, personnel, or other operations are subject to the direction and control of the Los Alamitos City Council are potentially restricted by section 87406.3 (see *Monagan* Advice Letter, No. A-93-473), these restrictions do not apply to county and special district positions unless the position is an elected position or a chief administrative position. As the city’s designee to the Library Board and the Vector Control Board, you have not held an elected position or a chief administrative position. Accordingly, section 87406.3’s restrictions would not extend to your appearances before or communications with the Library Board (including the libraries within the Library Board’s jurisdiction) and the Vector Control Board.³

³ As a current member of the Vector Control Board your actions may implicate the Act’s conflict-of-interest provisions. (See sections 87100-87105; regulation 18700-18709.) Therefore, we have enclosed the Commission’s fact sheet entitled, “Can I Vote? Overview of the Conflict of Interest Laws,” for your review. We must caution that if you act or purport to act on behalf of, or as a representative of, the Vector

In terms of any potential appearances before or communications with the Los Alamitos City Council or the agencies within its direction and control, appearances and communications are prohibited only if they are made for the purpose of influencing any “administrative action” including both “quasi-legislative” and “quasi-judicial” actions; “legislative action;” or “discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.” (Section 87406.3.)⁴

However, we point out that the one-year ban applies only to appearances or communications for which you are compensated for and which are made on behalf of any person as an agent, attorney, or representative. (Section 87406.3(a).) Regulation 18746.3 expressly provides that appearances or communications made to represent one’s personal interests, as defined in regulation 18702.4(b)(1), are not prohibited by the one-year ban of section 87406.3 except for appearances or communications made in a quasi-judicial proceeding⁵ in which one has previously participated.

Regulation 18702.4(b)(1) provides the following:

“An official’s ‘personal interests’ include, but are not limited to:

“(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

“(B) A business entity wholly owned by the official or members of his or her immediate family.

“(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control.”

Control Board in promoting and selling your book your actions will violate the Act’s conflict-of-interest provisions. Accordingly, you should not make appearances or communications to promote and sell your book unless it is clear to those meeting with you that you are not acting on behalf of the Vector Control Board.

⁴ An appearance or communication is for the purpose of influencing if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding. (Regulation 18746.2.)

⁵ “Quasi-judicial” means any proceedings that determine the rights of specific parties, or applies existing laws to specific situations, including but not limited to any proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits. (See *In re Curiel* (1983) 8 FPPC Ops. 1.)

You have provided the facts that you alone have retained all rights to your book and will be selling the book as a sole proprietor and you have not provided any facts indicating that you participated in quasi-judicial proceeding. Based upon these facts, it appears that you wholly own and have sole direction and control over the business entity selling the book. Accordingly, we conclude that your appearances before or communications with the Los Alamitos City Council or agencies within the council's direction and control to sell the book you have authored are not subject to the one-year ban of section 87406.3.

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

Sincerely,

Luisa Menchaca
General Counsel

A handwritten signature in black ink, appearing to read "B. Lau", with a stylized flourish extending to the left.

By: Brian G. Lau
Counsel, Legal Division

BGL:jgl
I:\AdviceLtrs\06-229