



FAIR POLITICAL PRACTICES COMMISSION

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March 21, 2008

Edwin F. Lowry
1124 13th Avenue
Sacramento, California 95822

Re: Your Request for Informal Assistance
Our File No. I-08-012

Dear Mr. Lowry:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Because your letter seeks general information, we are treating it as a request for informal assistance.² The Fair Political Practices Commission is charged with providing advice to persons who have duty under the Act. (See Section 83114(b).) The Commission does not address matters outside of the Act such as an employer's incompatible activities policy or matters implicating Government Code Section 1090 or Public Contract Code Sections 10410 or 10411. We suggest you seek advice from your new agency's counsel on these provisions.

QUESTION

In what way would your employment as a retired annuitant with the Department of Pesticide Regulation, serving on an ad hoc basis as an Administrative Law Judge, impact on your abilities to engage in the private section activities described below?

CONCLUSION

Nothing in the Act prevents a public official from engaging in employment activities outside state service nor limits the range of activities in which one may engage. The Act only restricts activities by current and former public officials relating to governmental decisions. As a retired annuitant employed by the state you are a public official subject to the conflict-of-interest provisions of the Act.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed).

FACTS

You retired from state service on February 3, 2007, as a Supervising Deputy Attorney General. You are now involved in a private venture, which involves structuring the financing of municipal infrastructure, primarily water treatment plants. In that role, you are likely to meet with employees of the State Water Resources Control Board, as well as the local Regional Water Quality Control Boards. In these meetings, you may discuss financing of wastewater facilities from the State Revolving Fund, and you may also discuss discharge requirements (WDRs) at these facilities. Additionally, you may testify in the legislature or meet with legislators and their staff concerning infrastructure financing.

The Department of Pesticide Regulation may offer you a position as a retired annuitant serving as an Administrative Law Judge on an ad hoc basis, hearing cases concerning alleged violations of California law regarding the use, sale, or distribution of pesticides.

ANALYSIS

Section 87100

Section 87100 of the Act prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. The Act does not ban private employment while serving as a public official.

The Act's conflict-of-interest provisions apply only to "public officials." (Sections 87100, 87103; Regulation 18700(b)(1).) "Public official" is defined as "every member, officer, employee or consultant of a state or local government agency...." (Section 82048.) An employee of a state agency who serves as a retired annuitant is a public official who is subject to the section 87100 conflict-of-interest prohibition of the Act. (*Evans Advice Letter*, I-01-143.)

The Commission uses an eight-step process in determining whether a public official has a disqualifying conflict of interest in a particular governmental decision. (Regulation 18700, subdivisions (b)(1) - (8) and *Can I Vote? Conflicts of Interest Overview*, copies enclosed.) You have not presented any information with respect to any governmental decision that you may be faced with that would implicate the conflict-of-interest provisions of the Act. (See Section 87100, et seq.) Without a specific governmental decision, we are unable to perform the analysis to determine if a conflict of interest exists.

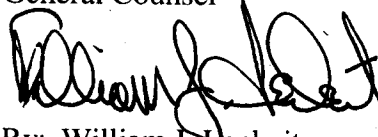
Section 87104

While the facts you provided do not appear to present this issue, please note that Section 87104 prohibits a state official from appearing before his or her agency, for compensation, to represent another person for the purpose of influencing a governmental decision.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in black ink, appearing to read "William J. Benkeit". The signature is stylized and written over the printed name below it.

By: William J. Benkeit
Senior Counsel, Legal Division

WJL:jgl

Enclosures