



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

June 25, 2009

Glen A. Campora
8622 Banff Vista Dr.
Elk Grove, CA 95624

Re: Your Request for Informal Assistance
Our File No. I-09-109

Dear Mr. Campora:

This letter is in response to your request for assistance regarding the conflict of interest and "revolving door" provisions of the Political Reform Act (the "Act").¹ Because you are requesting general information on the operation of the law, and do not inquire about a specific set of circumstances, we are providing informal assistance.² Also please bear in mind that the Commission does not advise on laws outside the scope of the Act, such as a government agency's policy regarding incompatible activities, or matters implicating Government Code Section 1090 or Public Contract Code Sections 10410 or 10411. We suggest you seek advice from your agency's counsel on these provisions.

QUESTIONS

1. Are you prohibited from contracting with a city or county to assist it in preparing its housing element, and from interacting with the California Department of Housing in the course of this employment?
2. Are you prohibited from subcontracting with a housing element consultant or contractor, for the limited purpose of preparing portions of a housing element, when only the subcontractor or local government interacts with HCD?
3. Does any other prohibition period apply to either of the above questions?

¹ Government Code Sections 81000-91014. 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)(3), copy enclosed).

CONCLUSIONS

The Act does not contain a general prohibition that would bar you from contracting with a city or county, or with a contractor to a city or county, for the purpose of assisting such a client in preparing a housing element for review by HCD. However, the Act does contain "revolving door" restrictions that would permanently bar you in certain cases from "switching sides" in any proceeding that you participated in while employed at HCD, and that could bar you for a period of 12 months from making certain communications with current HCD employees.

FACTS

Since January, 2009 you have been employed by the California Community Colleges' Chancellor's Office, as a Specialist, Finance & Fiscal Policy, a state civil service position that is not designated in the agency's Conflict of Interest Code. In this position you provide accounting, budgeting, and data compilation services in support of California's community colleges.

From 1996 through 2008 you worked in the Housing Policy Division within the California Department of Housing ("HCD"), a state agency. At HCD your duties included review and approval of local government "housing elements," which are planning vehicles periodically drafted by counties, municipalities and the like (often with the assistance of outside consultants) to guide development within their jurisdictions or spheres of influence. HCD's review and approval of these housing elements was directed at ensuring each jurisdiction's compliance with pertinent state law. Between 2001 and 2007 you held a position at HCD that was designated in the agency's Conflict of Interest Code, and accordingly were required to file annual Statements of Economic Interests.

The duties of your current position at the Chancellor's Office do not call directly on the specialized expertise you developed at HCD. You are, however, preparing to begin private, part-time compensated work in this field during your employment at the Chancellor's Office. You expect to offer your expertise to local government entities, assisting them in preparing housing elements that would then be submitted to HCD for review and approval. You anticipate that your services would include interactions with HCD staff, to answer any questions they might have and to provide any additional information necessary to secure HCD review and approval.

ANALYSIS

Because you are currently a state employee, and were until recently employed by a *different* state agency that will review materials submitted by your anticipated clients, your questions require that we consider the potential application of both the Act's conflict of interest provisions, and its "revolving door" restrictions.

Conflicts of Interest

Government Code Section 87100 and Regulation 18700 provide that “no public official . . . may make, participate in making or in any way use or attempt to use his/her official position to influence a governmental decision in which he/she knows or has reason to know he/she has a disqualifying conflict of interest.” Under Section 87103, a public official has a “disqualifying conflict of interest” if the decision will have a reasonably foreseeable material financial effect on, among other things, a source of income to an official.

As to decisions that are before agencies other than an official’s current employer, a public official is not making or participating in making the decision should the official appear before his or her current agency. However, under Section 87100 the official is using his or her official position to influence a governmental decision as specified by Regulation 18702.3(b):

“[T]he official is attempting to use his or her position to influence the decision if, for the purpose of influencing the decision, the official acts or purports to act on behalf of, or as a representative of, his or her agency to any member, officer, employee or consultant of an agency. Such actions include, but are not limited to the use of official stationary.”

In addition, a separate conflict of interest rule under Section 87104 prohibits a state official from making compensated appearances representing others before the official’s own state agency for the purpose of influencing a contract, grant, loan, license, permit or other entitlements for use.

As to the prohibition of Section 87100, you will not be making, participating in making, or using your official position to influence the making of any governmental decisions before an agency other than the Chancellor’s Office so long as you do not purport to represent the Chancellor’s Office. Section 87104 operates only to restrict your appearances before the Chancellor’s Office. Your account of the facts indicates that you do not anticipate any actions raising questions under either of these provisions. On that understanding, we conclude that your planned employment would not involve you in a conflict of interest.

Post-Governmental Employment Restrictions

Public officials are subject to three post-governmental employment restrictions under the Act, known as the “revolving door” prohibitions. The first two, the “one-year ban” and the “permanent ban” typically apply after an official his or her leaves public employment. The third restriction, the ban against influencing prospective employment, applies before an official with decisionmaking authority leaves public service. It does not appear from your account of the facts that you will have occasion to use your present

position to influence negotiations for the private employment you anticipate, and on this assumption we do not discuss that restriction in the present letter.

The One-Year Ban - The "one-year ban" prohibits a former employee of a state administrative agency (such as HCD) from making any formal or informal appearance, or making any oral or written communication, for compensation, with his or her former agency for the purpose of influencing a wide variety of administrative or legislative actions, or influencing certain proceedings. (See Section 87406; Regulation 18746.1.)³

The one-year ban applies to any employee of a state administrative agency who held a position that is designated or should be designated in the agency's conflict of interest code. (Section 87406(d)(1); Regulation 18746.1(a)(2).) While in effect, the one-year ban applies only when a former employee is being compensated for appearances or communications before his or her former agency on behalf of any person as an agent, attorney, or representative of that person. (Regulation 18746.1(b)(3) and (4).)

The ban applies for one year after leaving any state agency, regardless of whether an employee has left state employment entirely, or left to work for another state agency. (Regulation 18746.1(b)(1).) Therefore the one-year ban applies to your appearances before HCD for one year after you left HCD, notwithstanding your current employment at the Chancellor's office.

The one-year ban applies to proceedings involving "any appearance or communication made for the purpose of influencing administrative or legislative action or any discretionary act involving the issuance, amendment, awarding, revocation of a permit, license, grant or contract, or the sale or purchase of goods or property." (Regulation 18746.1(b)(5).) HCD's review of a local government's housing element involves the issuance or amendment of a "permit," because approval of a housing element is a discretionary act that is a necessary precondition to the use or transfer of real property whose permissible uses are specified by the housing element. Accordingly, we conclude that HCD's consideration of a local government's housing element is a "proceeding" governed by Section 87406(d)(1).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.) An appearance or communication includes conversing, by telephone or otherwise, corresponding in writing or by electronic transmission, attending a meeting, or delivering or sending any communication. (*Id.*)

³ "Administrative action," as pertinent here, is defined by Section 82002(a) to include "the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding...."

⁴ Our conclusion here is consistent with Section 81003, which provides that the Act "should be liberally construed to accomplish its purposes." The purpose of the one-year ban is to reduce the influence a recently departed agency employee may exert on officials who, until recently, were his or her coworkers.

Not all communications with an official's former state employer are prohibited by the one-year ban. Appearances or communications before a former state employer, made as part of "services performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement may be excluded from the [one-year] prohibitions . . . provided the services do not involve the issuance, amendment, awarding, or revocation of any of these actions or proceedings." (Regulation 18746.1(b)(5)(A); *Quiring* Advice Letter, No. A-03-272; *Hanan* Advice Letter, No. I-00-209.)

Regulation 18746.2(b)(1)-(4) also provides that appearances or communications are not restricted under the one-year ban if former official:

- "(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."

We have also advised that a former agency official may, without violating the one-year ban, draft proposals on a client's behalf to be submitted to the agency as long as the former employee is not identified in connection with the client's efforts to influence administrative action. (*Cook* Advice Letter, No. A-95-321; *Harrison* Advice Letter, No. A-92-289.) Similarly, a former agency official may use his or her expertise to advise clients on the procedural requirements, plans, or policies of the official's former agency as long as the employee is not identified with the employer's efforts to influence the agency. (*Perry* Advice Letter, No. A-94-004.)

In summary, your appearance before or communication with HCD officials to influence the outcome of a housing element review is subject to the one-year ban for 12 months after you left your employment at HCD, if you are compensated for these services.

The Permanent Ban - The "permanent ban" prohibits a former employee of a state administrative agency from "switching sides" and participating, for compensation, in any specific proceeding involving the State of California, or assisting others in the proceeding if it is one in which the former employee participated while employed by the state (see Sections 87401-87402, Regulation 18741.1). The permanent ban applies to your work as an employee of HCD, even though you are now employed by a different state agency. (Regulation 18741.1(a)(1).)

The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which you participated while working at HCD. "'Judicial, quasi-judicial or other proceeding' means 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 . . .” (Section 87400(c).) An official has “participated” in a proceeding if he or she took part in the proceeding “personally, and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information . . .” (Section 87400(d).)

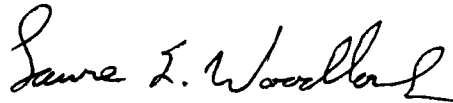
The permanent ban does not apply to a ‘new’ proceeding, even where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A ‘new’ proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings. (*Rist* Advice Letter, No. A-04-187; see also the *Donovan* Advice Letter, No. I-03-119.)

We do not know whether your service at HCD might have involved you in proceedings giving rise to the permanent ban. You should keep in mind the possible application of the permanent ban, if you are retained to work on a matter that constitutes a “proceeding” in which you were involved while employed at HCD. For example, you would be permanently banned from providing compensated services to a private employer relating to any housing element on which you worked at HCD, unless the housing element has through amendment or other circumstances become a “new proceeding.” We will be happy to provide further assistance if you have questions relating to any specific activities.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

LTW:jgl

Enclosure