



## FAIR POLITICAL PRACTICES COMMISSION

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June 15, 2009

Nancy E. Hayward  
3218 Rancho Silva Drive  
Sacramento, California 95833

Re: Your Request for Advice  
**Our File No. A-09-133**

Dear Ms. Hayward:

This letter responds to your request for advice regarding the post-governmental restrictions of the Political Reform Act (the "Act").<sup>1</sup> Please note that our advice is based solely on the Act. We therefore offer no opinion on the application, if any, of other post-government employment laws such as Public Contract Code Section 10411. In addition, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

### QUESTION

Does the one-year ban prohibiting a public official from appearing before or communicating with his or her former agency, for compensation, bar you from accepting employment with a private employer that engages in influencing policy issues before the California Department of Health Care Services ("DHCS"), an agency that was formed when the Department of Health Services ("DHS), split into two agencies, DHCS and the California Department of Public Health ("CDPH"), if you performed no work for DHCS during the past 12 months?

### CONCLUSION

No. The Act does not prohibit you from accepting employment with the private employer. You may also appear before and communicate with employees of DHCS, for

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<sup>1</sup> 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.

compensation, because you have not worked for or represented this agency during the last 12 months. Although this agency and the agency that employs you are under a larger state agency, they are considered separate agencies because they control their own budgets, personnel and operations. However, while you remain employed by a state agency, you are prohibited from making, participating in making, or using your official position to influence any governmental decisions directly relating to your future employer. Also, if you participated in certain proceedings while employed by the state, you are permanently prohibited from advising or representing any person, other than the state, for compensation, in any proceeding in which you participated while in state service.

### FACTS

Until July 1, 2007 you were employed by DHS. On that date, DHS split into two separate agencies, DHCS and CDPH. Since July 1, 2007, you have been employed by CDPH as a Staff Services Manager III. You intend to retire from state service on July 10, 2009 and begin private employment on August 3, 2009. Your new employer engages in influencing policy issues before DHCS. You have never worked for DHCS since the split, nor have you represented DHCS in the last 12 months.

### ANALYSIS

#### *Post-Governmental Employment Restrictions*

Public officials who leave state service are subject to two types of post-governmental employment provisions under the Act, colloquially known as the "revolving door" prohibitions.

#### **One Year Ban**

This ban prohibits a public official from appearing before or communicating with, for compensation, any agency for which he or she worked during the 12 months before leaving employment, or any officer or employee thereof, for the purpose of influencing any administrative, legislative or other specified action (including contracts). (Section 87406, Regulation 18746.1.) The ban applies to employees who are designated or should be designated in their former agency's conflict-of-interest code. As a Staff Services Manager III, you are a designated employee. Therefore, for one year after leaving CDPH, you may not communicate with CDPH, or any other state administrative agency that you worked for during the last 12 months before your retirement, in an attempt to influence any transaction involving legislative or administrative action or other specified action (including contracts).

A threshold task in applying the one-year ban is to identify the "state administrative agency" for which an employee has worked within the meaning of Section

87406. Generally, if a department or office of a state agency controls its own budget, personnel and operations, it is considered to be a "state administrative agency" and the one-year ban extends only to that department or office. (*Corum* Advice Letter, No. A-02-258). On July 1, 2007, DHS split into two departments, CDPH, for whom you worked, and DHCS for whom you did no work. You have advised that even though CDPH is a department within the Health and Human Services Agency ("HHS"), CDPH controls its own budget, personnel and other operations. Under the standards set forth in the *Corum* advice letter, CDPH is a "state administrative agency" separate and apart from HHS.

Section 87406 expressly provides that the prohibition is imposed for a period of one year after leaving employment and applies to any state administrative agency for which the former employee worked or represented during the 12 months before leaving office or employment. Because you did not work for nor did you represent DHCS within the last 12 months, the one-year ban does not prohibit you from going to work for your new employer or appearing before or communicating with DHCS on behalf of your new employer.

### **Permanent Ban**

While you have not inquired regarding the permanent ban, we wish to caution you regarding its prohibitions. The permanent ban is a lifetime ban that prohibits a public official from ever "switching sides" in a proceeding after leaving state service. This ban prohibits a former state administrative official from advising or representing any person, other than the State of California, for compensation, in any judicial, quasi-judicial or other proceeding in which the official participated while in state service. (Sections 87401-87402, Regulation 18741.1.)

As a Staff Services Manager III of DHS, and now of CDPH, you were and are a state administrative official for purposes of the Act and you are, therefore, subject to the permanent ban. (Section 87400(b).) To determine if the permanent ban applies, you would need to identify the proceedings in which you participated while employed by the state. "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).)

### **Ban on Influencing Prospective Employment**

Finally, we draw your attention to the ban against influencing prospective employment contained in Section 87407: "No public official, 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."

You state that you have accepted employment within "private industry" with a starting date of August 3, 2009. Under Regulation 18747(c)(2), a public official has an "arrangement" concerning prospective employment when he or she accepts an employer's offer of employment. Accordingly, you are prohibited from making, participating in making, or using your official position at CDPH to influence any governmental decisions directly relating to your future employer.

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 "Valentina Joyce", written in a cursive style.

By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl