



FAIR POLITICAL PRACTICES COMMISSION

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June 15, 2009

Robert A. Nakamae
Deputy County Counsel
70 West Hedding Street, 9th Floor
San Jose, CA 95110-1770

**Re: Your Request for Informal Assistance
Our File No. I-09-140**

Dear Mr. Nakamae:

This letter is in response to your request for advice regarding the revolving door provisions of the Political Reform Act (the "Act").¹ Generally, the Commission will not give advice to third parties about another person's duties under the Act. However, since the agency has some duties under Section 87404² regarding former public officials, we may speak generally about the rules applicable in the context you describe. (Reg. 18329, subd. (b)(8)(A) and (B).) Thus, we are treating your request as one for informal assistance because you are not requesting advice about a particular proceeding.³ (Regulations (b)(8)(C) and (D).)

QUESTION

Under the revolving door prohibition applicable to local officials, would a former Supervising Auditor-Appraiser in the Business Division of the County be prohibited from appearing before the county and county staff in connection with new property tax audits regarding the same taxpayer that the former employee audited as a county employee?

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 Section 87404 provides: "Upon the petition of any interested person or party, the court or the presiding or other officer, including but not limited to a hearing officer serving pursuant to Section 11512 of the Government Code, in any judicial, quasi-judicial or other proceeding, including but not limited to any proceeding pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code may, after notice and an opportunity for a hearing, exclude any person found to be in violation of this article from further participation, or from assisting or counseling any other participant, in the proceeding then pending before such court or presiding or other officer."

³ 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.)

CONCLUSION

No. The Act does not provide a "permanent" revolving door ban that applies to local officials. The Act does provide a one-year ban, but that would not apply to a local official that left public employment in 2005.

FACTS

You are the Deputy County Counsel for Santa Clara County. You are asking about a former county employee, James White. Mr. White was a former Supervising Auditor-Appraiser in the Business Division of the County. He left the county in 2005. You ask whether he would be prohibited from appearing before the county and county staff in connection with property tax audits regarding the same taxpayer that the former employee audited as a county employee.

ANALYSIS

The Act has two post-governmental employment restrictions on individuals who are considering leaving or who have left a local government agency.

1) Section 87407, prohibits certain state and local officials from making, participating in making, or using their official positions to influence decisions affecting persons with whom they negotiate employment, or have any arrangement concerning employment. (Section 87407; Regulation 18747.) Because Mr. White has already left public employment, this section does not apply.

2) Local governmental officials who leave government 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 action, or any discretionary act such as the issuing, amending, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property. (Section 87406.3; Regulation 18746.3, copies enclosed.)

Section 87406.3(a) provides:

"(a) A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041 shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, 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.”

The one-year ban of Section 87406.3 applies to certain employees or officers of local governmental agencies including local elected officials, chief administrative officers of counties, city managers, and general managers or chief administrators of special districts. (Section 87406.3(a).) In addition, Regulation 18746.3(a) states:

“(a) The prohibitions of Government Code section 87406.3 apply to a public official who, on or after July 1, 2006, holds a position as a:

“(1) Local elected official;

“(2) Chief administrative officer of a county;

“(3) City manager, including the chief administrator of a city; or

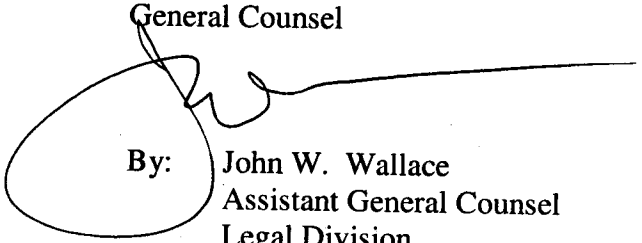
“(4) General manager or chief administrator of a special district who holds a position with a local government agency as defined by Government Code section 82041, including the general manager or chief administrator of an air pollution control district or air quality management district.”

Because Mr. White left before the effective date of the statute and, in any case, a year has already passed, the local one-year ban does not apply. While the Act does provide a permanent ban applicable to certain proceedings (Section 87400 et seq.), this ban applies only to state officials.

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

Sincerely,

Scott Hallabrin
General Counsel


By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl