



FAIR POLITICAL PRACTICES COMMISSION

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June 11, 2009

Joe Soto
The Soto Company
34275 Camino Capistrano
Capistrano Beach, CA 92624

Re: Your Request for Advice
Our file No. A-09-144

Dear Mr. Soto:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the "Act").¹ This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A), enclosed.)

QUESTION

Do the Act's post-governmental employment provisions applicable to local officials prohibit you from bidding on a city maintenance contract for a city for which you are a former city councilmember?

CONCLUSION

The Act's one-year ban prohibits a local official from making an appearance before or communication with his or her former agency, for compensation, to influence any legislative or administrative action, or a discretionary act including entering into a contract.

Therefore, you may not, for a period of one year after leaving the city council, represent for compensation any other person (including a business entity) by communicating or appearing before the Board for the purpose of influencing any contract.

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.

The prohibition does not apply, however, if you make an appearance before the city council solely to represent your personal interests as defined in Regulation 18702.4(b)(1).

FACTS

You and your wife are sole owners of The Soto Company, a Professional Landscaping and Maintenance Firm. You were a member of the San Juan Capistrano City Council from November of 2002 until November of 2008. You served as mayor in 2004 and 2008. In your official capacity, you were not involved in discussion of landscape contracts, landscape specifications, or the selection process of contractors. You also abstained from voting on awards of landscape or maintenance contracts.

Currently, the city is accepting bids for maintenance services, and you would like to submit a proposal on behalf of your firm, The Soto Company.

ANALYSIS

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 their 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 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."

As seen above, the prohibitions in Section 87406.3 apply only to appearances or communications for which you are compensated and that 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) (copy enclosed), are not prohibited by the one-year ban of section 87406.3 except for appearances or communications made in a quasi-judicial proceeding 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.”

You and wife are the sole owners of The Soto Company, as you explained to us during our June 1, 2009 telephone conversation. Based on this fact, we conclude that your proposal to or subsequent appearances before and communications with the San Juan Capistrano City Council related to your business 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,

Scott Hallabrin
General Counsel



By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl