



## FAIR POLITICAL PRACTICES COMMISSION

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September 15, 2009

Jo Ann Winternheimer  
8634 Lupone Court  
Elk Grove, California 95624

Re: Your Request for Informal Assistance  
**Our File No. I-09-195**

Dear Ms. Winternheimer:

This letter is in response to your request for assistance regarding the “revolving door” provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because you are requesting general information, we are providing you with informal assistance.<sup>2</sup> Our advice is based solely on the provisions of the Act. We offer no opinion on the application, if any, of other post-government employment laws such as Public Contract Code Section 10411. We urge you to consult with your agency’s counsel or the Attorney General’s office on these provisions, particularly regarding Public Contract Code Section 10411.

### QUESTION

After working as a contract employee for both state and local government on matters involving child welfare, would working in the private sector for a company that does or would like to do business with the state in the area of child welfare be a violation of the Act’s revolving door provisions?

### CONCLUSION

You are not prohibited by the Act from working for a private sector company in area of child welfare. However, the Act’s permanent ban applies to your position with the State and

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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 regulations may be found in Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> 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.)

because of this you may be prohibited from participating in certain activities in your new private sector job.

### FACTS

In 1992 you became a contract employee for the State of California (the "State") to assist in the design of the Child Welfare Case Management System, which began in 1997. You were required to file a statement of economic interests (Form 700) in this position. Prior to that time you were a county employee with program knowledge and experience in child welfare. You continued as a state contracted county employee until you left state government service in 2003 and also filed a statement of economic interests (Form 700) with the State in this position. In 2005, you became a contract employee for the County Welfare Director's Association and functioned as a liaison between counties and the State in matters regarding child welfare policy and practice as it involved the child welfare automated system. You were also required to file a statement of economic interests (Form 700) in this position. You resigned from this position in 2008. Currently, you are considering consulting with a private sector company that does business or would like to do business with the State. Specifically, you would apply your knowledge in state and federal guidelines affecting child welfare, the desires and needs of child welfare administrators and line staff as they pertain to automated systems and current system functionality in the proposed position. You believe this knowledge could be beneficial to a private sector company as you could review, edit and assist in the development of proposals in response to bid requests, requirements analysis and design, and state and county relationships already in place. You would like advice as to whether working in the private sector in the capacities listed above would be in conflict with any post employment restrictions for persons who worked as contracted consultants.

### ANALYSIS

Public officials are subject to three types of post-governmental restrictions under the Act. The one-year "revolving door" restriction, the permanent ban and the restriction on influencing prospective employment.

The one-year "revolving door" restriction bars certain state employees from communicating, for compensation, with their former agencies for the purpose of influencing certain administrative or legislative action. (Section 87406, Regulation 18746.1.) Because it has been over one year since you left your position with the State, this restriction is no longer applicable to you.

There is also a separate one-year "revolving door" restriction for local government employees under Section 87406.3. This ban applies only to a local elected official, a chief administrative officer of a county, city manager, including the chief administrator of a city, or a general manager or certain chief administrators of a special district. (Regulation 18746.3(a).) You indicated that as a contract employee with the County from 2005 through 2008 you functioned as a liaison between counties and the State in matters regarding child welfare policy and practice as it involved the child welfare automated system. It does not appear that this

position was one that would be subject to the local one-year revolving door restriction. Therefore, this restriction also would not apply to you.

A restriction on influencing prospective employment prohibits a state or local public employee from participating in, or using his or her official position to influence, a governmental decision directly relating to any person with whom he or she is negotiating or has an arrangement concerning prospective employment. (Section 87407, Regulation 18747.) However, because you have already left government service, this restriction no longer applies to you and therefore will not be discussed here.

Finally, a permanent ban prohibits a former state employee from "switching sides" to participate, for compensation, in a proceeding involving the State of California if the proceeding is one in which the former state employee participated while employed by the state. (Sections 87401-87402, Regulation 18741.1.) There is no permanent ban on activities associated with employment with local government agencies. Therefore, the permanent ban would apply only to activities you engaged in while employed with the State between 1992 and 2003.

#### **The Permanent Ban on "Switching Sides"**

The permanent ban prohibits a former state employee from "switching sides" and participating, for compensation, in any specific proceeding involving the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (See Sections 87401-87402; Regulation 18741.1.)

The permanent ban is a lifetime ban applicable to any judicial, quasi-judicial, or other proceeding in which you participated while employed as a state administrative official. "'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 in cases 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, subject matter, or circumstances that differ from those involved in previous proceedings. (*Rist* Advice Letter, No. A-04-187; also see *Donovan* Advice Letter, No. I-03-119.) New contracts let by the employee's former agency, in which the former employee did not participate, are considered new proceedings. (*Leslie* Advice Letter, No. I-89-649.) A "new" contract is one based on new consideration and new terms, even if it involves the same parties. (*Ferber* Advice Letter, No. I-99-104; *Anderson* Advice Letter, No. A-98-159.) In addition, the application, drafting, and the award of a contract, license, or approval is considered a proceeding separate from the monitoring

and performance of the contract, license, or approval. (*Anderson, supra; Blonien Advice Letter, No. A-89-463.*)

While we have outlined the general provisions of the permanent ban for your review, you have not advised us in detail of your participation in specific proceedings while in state service, nor of the potential relationship between any such proceedings and matters on which you will be employed by a private-sector client. To evaluate application of the permanent ban to services you may lawfully offer a private-sector client, you will need to determine whether any of the services you may provide to a new employer involve a proceeding in which you participated while employed by the State. (Regulation 18741.1(a)(4).) If you need assistance in evaluating private-sector services relating to a specific proceeding in which you *may* have previously participated, you should seek further advice when you can provide us with the relevant facts.<sup>3</sup>

If you have other questions in this area, please feel free to contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin  
General Counsel



By: Sukhi K. Brar  
Counsel, Legal Division

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Enclosure

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<sup>3</sup> Enclosed please find a copy of our fact sheet "Leaving Your State Job? Post Employment Restrictions May Affect You." for your review.