



## FAIR POLITICAL PRACTICES COMMISSION

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January 6, 2010

Richard Rushton  
8038 Griffith Lane  
Sutter, California 95982

**RE: Your Request for Advice**  
**Our File No. A-09-260**

Dear Mr. Rushton:

This letter is in response to your request for advice regarding the post- governmental employment provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that there may be other laws outside the Act that may apply to your situation, including but not limited to Sections 1090 et seq. of the Government Code regarding contracts and Public Contract Code Section 10411. The Commission's advice is limited to matters arising under the Act. (Regulation 18329(b)(8)(d).) We urge you to check with the state Attorney General's office or your personal counsel to determine if there are other laws that may be applicable in light of the facts you present.

### QUESTIONS

1. May you, as a retired designated employee of the California Highway Patrol ("CHP") whose work involved development of bid specifications for maintenance and procurements related to aviation, bid on behalf of your business on contracts with CHP or any other state agency that puts out contracts for competitive bid?
2. May you work for a current vendor of CHP who has won a competitive bid?
3. May you purchase a Federal Aviation Administration license for a specific product installation and then enter into an agreement with a CHP vendor pursuant to which the vendor would use that "one-time" license to install the product on a CHP aircraft?

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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.

4. If the answer to any of the foregoing questions is "no," may you perform the contemplated work or actions as an employee of your wife's solely owned business?

### CONCLUSIONS

1. You are not barred by the "permanent ban" from bidding on contracts with CHP or other state agencies because your work at CHP consisted of drafting bid specifications applicable to all bidders and not to any identifiable specific party. The permanent ban only covers proceedings that affect the rights or claims of specific parties. The one-year ban does not prohibit you from appearing or communicating with CHP for the purpose of bidding on these contracts because you will be doing so solely to represent your personal interest. The one-year ban applies when a former employee is being compensated for his or her appearance on behalf of another person.

2. You may perform work for a current CHP maintenance vendor so long as you are not identified with the vendor's efforts to influence CHP, as discussed below.

3. You may acquire an FAA license for a specific product installation and contract with a CHP vendor to use that license to install the product on a CHP aircraft so long as your involvement with the vendor is limited to providing the license and you are not identified with the vendor's efforts to influence CHP's award of the contract, as discussed below.

4. It makes no difference whether you bid on a CHP contract or perform work for a CHP vendor as an owner of your business or as an employee of a business owned by your spouse. The post-governmental employment provisions of the Act bar former government employees (individuals) from engaging in certain conduct and do not apply to businesses.

### FACTS

You retired from CHP on November 13, 2009 as a uniformed sergeant assigned to the Office of Air Operations with the title of Aviation Maintenance Supervisor. Your unit developed bid specifications for maintenance and procurement related to aviation. All specifications drafted by your unit were reviewed by you. After these specifications were reviewed by you, your unit commander and the division commander, they were submitted to the CHP contracts unit and/or CHP Purchasing Services unit which put contracts or procurements out to bid. Your unit was not involved with the selection of vendors.

You are planning on starting your own aviation consulting business. You would like your company to bid on CHP or other state agency contracts. You would also like to work for a current CHP maintenance vendor who won a competitive bid. In addition, you ask whether you may purchase a Supplemental Type Certificate, which is a Federal Aviation Administration ("FAA") license that signifies FAA's approval of a specific product installation, on an aircraft. Once you acquire the license, you intend to enter into an agreement with a CHP vendor to install the product. The vendor would pay your company for a one-time license to install the product on

a CHP aircraft. You are considering having your wife, who retired from CHP three years ago, own the business, in which case you would be an employee.

In our telephone conversation of December 15, 2009, you confirmed that you were a designated employee in the CHP conflict-of-interest code and filed Statements of Economic Interest.

## ANALYSIS

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. We look to these provisions to answer your questions.

### I. Permanent Ban: "Switching Sides"

The first restriction is the "permanent ban" prohibiting a former state administrative official 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 administrative official participated while employed by the state (See Sections 87401-87402 and Regulation 18741.1.) "State administrative official" is defined as "every member, officer, employee or consultant of a state administrative agency who, as part of his or her official responsibility, engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity." (Section 87400(b).)

The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which the official participated while employed. "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).) Additionally, an official is considered to have "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)); or, if the proceeding was under his or her "supervisory authority." (Section 87401, Regulation 18741.1 (a)(4).)

We focus our analysis on determining whether any of the actions in which you now wish to engage involve a "proceeding" in which you participated while employed at CHP. (Regulation 18741.1(a)(4).) You state that one of your primary duties at CHP was to review all bid specifications developed by your unit for maintenance and procurement related to aviation before the specifications were submitted to your unit commander, the division commander and, finally, to the units that put contracts or procurements out to bid. Contracts are specifically included in the definition of "judicial, quasi-judicial or other proceeding." (Section 87400(c).)

However, the permanent ban only covers proceedings, including applications for a contract, that affect the rights or claims of specific parties. It does not apply to those that involve the making of rules or policies of general applicability. (*Beale* Advice Letter; No. A-00-146.) For example, we previously advised that a state administrative official who, as part of the official's state employment, developed a system for setting foster care rates applicable to all group homes was not involved in a "judicial, quasi-judicial or other proceeding" because the system did not involve any one specific group home. (*Bersinger* Advice Letter; A-82-209.) We have also advised that the formulation of a rate design policy for the Public Utilities Commission was not a "judicial, quasi-judicial or other proceeding" because the policy had an industry-wide application, and did not focus on any specific utility. (*Fong* Advice Letter; A-88-024.) In the *Metz* Advice Letter, No. I-06-147, we concluded that a retired captain of the Department of Corrections and Rehabilitation who developed a draft plan for delivery of community treatment services to parolees was not subject to the permanent ban because the plan merely set forth options for how the services would be delivered and the plan did not involve the rights or claims of identifiable specific parties. Your participation in the process leading up to the granting of a contract consisted of drafting or approving drafts of bid specifications. It is our understanding that these specifications were applicable to all bidders on any resulting contract and that, at this stage of a contract's life cycle, there was no identifiable specific party in mind.

Therefore, we conclude that your work at CHP did not involve participation in a proceeding that affected the rights of specific parties, but instead, involved the making of specifications of general applicability. Accordingly, the actions you are proposing in your four questions are not prohibited by the life-time ban.

## **II. The One-Year Ban: "Revolving Door"**

The second restriction is the "one-year ban," which prohibits a state employee, for one year after leaving state service, and for compensation, from communicating with his or her former agency for the purpose of influencing certain administrative or legislative action or influencing certain proceedings. (See section 87406; Regulation 18746.1.) In contrast to the permanent ban, which only applies to "judicial or quasi-judicial" proceedings, the one-year ban applies to any "appearance or communication" for 12 months from the date of your separation from employment with CHP. While in effect, the one-year ban prohibits any formal or informal appearance or oral or written communication with your former agency for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding. (Regulations 18746.1(b) and 18746.2.)

An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding in writing or by electronic transmission, attending a meeting, and delivering or sending any communication "for the purpose of influencing administrative or legislative action, or any discretionary action to influence 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." (Regulations 18746.1(b)(5)(C) and 18746.2(a).)

1. Bidding on CHP or other state agency contracts.

The one-year ban applies when a former employee or official is being compensated for his or her appearances or communications before his or her former agency *on behalf of another person*. (Section 87406; Regulation 18746.1(b)(3).) You indicate that you would represent your personally owned company when bidding on these contracts. Regulation 18746.1(b)(4) provides that an "appearance or communication made by a public official *solely to represent his or her personal interest*, as defined in Regulation 18702.4(b)(1), is not prohibited or limited." (Emphasis added). Regulation 18702.4(b)(1) provides that a public official is not attempting to use his or her official position to influence a governmental decision of an agency if the official "appears in the same manner as any other member of the general public before an agency in the course of its prescribed governmental function *solely to represent himself or herself on a matter which is related to his or her personal interests*." (Emphasis added.) The definition of "personal interests" includes a business entity wholly owned by the official or members of the official's immediate family. (Regulation 18702.4(b)(1)(B).) When you appear before the CHP to bid on a contract on behalf of a company that either you or your spouse own, you will be representing your personal business interest. When making such bids, you will neither be representing another person nor receiving compensation from another person as proscribed by the one-year ban. Therefore, the one-year ban does not prohibit you, your company or your wife's company from bidding on contracts offered by CHP or any other state agency.

2. Working for a current maintenance vendor of CHP.

Section 87406 does not prevent you from advising or assisting others, either as an employee or as an independent consultant, in their pursuit of state contracts. However, in doing so, you are prohibited from making any formal or informal appearance, or making any oral or written communication, before your former employer or other state agencies 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. (Regulation 18746.2(a).)

The Commission has previously advised that a former agency official could draft proposals on a client's behalf to be submitted to the agency *so long as the former employee was not identified in connection with the client's efforts to "influence administrative action."* (Harrison Advice Letter, No. A-92-289); Miller Advice Letter, No. I-93-098; and Kingma-Rymek Advice Letter, No. A-95-141.) 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 *so long as the employee is not identified with the employer's efforts to influence the agency.* (Perry Advice Letter, No. A-94-004.) Therefore, your proposed work for a CHP vendor is not prohibited by the one-year ban so long as you are not identified with the vendor's efforts to influence CHP.

3. Contracting with a CHP vendor to license a product installation.

As stated above, Section 87406 does not prevent you from advising or assisting others, either as an employee or as an independent contractor, in their pursuit of state contracts. You are, however, prohibited from making any formal or informal appearance or from making any oral or written communication, before your former employer or other state agencies if the appearance or communication is made for the purpose of 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.

If your involvement with the vendor's contract with CHP is limited to providing the necessary FAA license, there would be no violation of the one-year ban. However, if you assist the vendor in drafting his or her proposal to CHP, you could be violating the one-year ban *unless you are not identified* with the vendor's efforts to influence CHP in awarding the contract.

4. Ownership of the Business by your Spouse

Our analysis does not change if you perform the work you have described as an employee of a business owned by your spouse. The prohibition of Section 87406(d)(1) applies to an "employee." Only individuals can be employees. Therefore, you, and not the business, are subject to the provisions of the one-year ban. (See also Section 87406(e), referring to an individual.)

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

Sincerely,

Scott Hallabrin  
General Counsel



By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl