



FAIR POLITICAL PRACTICES COMMISSION

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December 8, 2009

Karen Khamou
Consultant, State Agency Relations Dept.
Pacific Gas & Electric Company
77 Beale Street
San Francisco, California 94105

**Re: Your Request for Advice
Our File No. A-09-267**

Dear Ms. Khamou:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the "Act").¹ Please note this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please bear in mind also that 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.

QUESTION

Does the "one-year" prohibition on appearing before or communicating with your former state employer for the purpose of influencing any legislative or administrative action apply to your attendance at a party held by your former state agency?

CONCLUSION

The one-year revolving door prohibition applies only to contacts with your former state employer, or employees thereof, for the purpose of influencing any legislative or administrative action or action involving a permit, license, grant or contract, or the sale or purchase of goods or

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.

property. Therefore, it is permissible for you to attend the party, but, as discussed below, you cannot be paid to make communications at the party for the purpose of influencing actions by the agency.

FACTS

You are a former employee of the Air Resources Board (ARB) and are subject to the one-year revolving door ban. You left the ARB April 6, 2009. You currently work at Pacific Gas & Electric Company (PG&E) as a consultant to their State Agency Relations Department.

You were recently invited to a holiday party being held by your former coworkers at the ARB. You asked whether the "one-year" ban would prohibit your attending the event.

ANALYSIS

Public officials are subject to two post-governmental employment restrictions under the Act. A 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.) 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.) Your question concerned the one-year ban.

Regulation 18746.1(b) outlines the circumstances when the prohibitions of the one-year ban will apply. Under this regulation, an official covered by the one-year ban is prohibited from making an appearance or communication if all of the following apply:

"(1) The official has left his or her state office or employment, which means he or she has either permanently left state service or is on a leave of absence.

"(2) The appearance or communication is made within 12 months after leaving state office or employment.

"(3) The public official is compensated, or promised compensation, for the appearance or communication. However, a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services is not prohibited or limited by this section.

"(4) The appearance or communication is made on behalf of any person as an agent, attorney, or representative of that person. An appearance or communication made by a public official solely to represent his or her personal interests, as defined in 2 Cal. Code Regs., Section 18702.4, subdivision (b)(1), is not prohibited or limited by this section.

“(5) The appearance or communication is made for the purpose of influencing, as defined in 2 Cal. Code Regs. Section 18746.2, any legislative or administrative action, or any discretionary act involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.

“(A) Services performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement may be excluded from the prohibitions of this regulation, provided the services do not involve the issuance, amendment, awarding, or revocation of any of these actions or proceedings . . .

“(6) The appearance or communication is made before any officer or employee of any of the following:

“(A) Any state administrative agency that the public official worked for or represented during the 12 months before leaving state office or employment . . .

“(B) Any state administrative agency which budget, personnel, and other operations are subject to the direction and control of any agency described in subdivision (b)(6)(A) . . .

“(C) Any state administrative agency subject to the direction and control of the Governor, if the official was a designated employee of the Governor's office during the 12 months before leaving state office or employment.”

Communications restricted by the one-year ban include any formal or informal appearance or oral or written communication made to influence legislative or administrative action or any action on a proceeding. (Section 87406(d)(1).) These communications include, but are not limited to, conversing directly or by telephone, corresponding by writing or e-mail, attending a meeting, and delivering or sending any communication. (Regulation 18746.2(a).) A communication is considered to be for the purpose of influencing legislative or administrative action “if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding.”² (Regulation 18746.2(a).)

Certain communications are not restricted under the one-year ban. A communication is not subject to the one-year ban when the former official:

² "Legislative action" is defined at Section 82037 to mean "the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity. "Legislative action" also means the action of the Governor in approving or vetoing any bill." Section 82002(a) provides that "'Administrative action' means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

“(1) Participates as a panelist or formal speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;

“(2) Attends a general informational meeting, seminar, or similar event;

“(3) Requests information concerning any matter of public record; or

“(4) Communicates with the press.” (Regulation 18746.2(b)(1)-(4).)

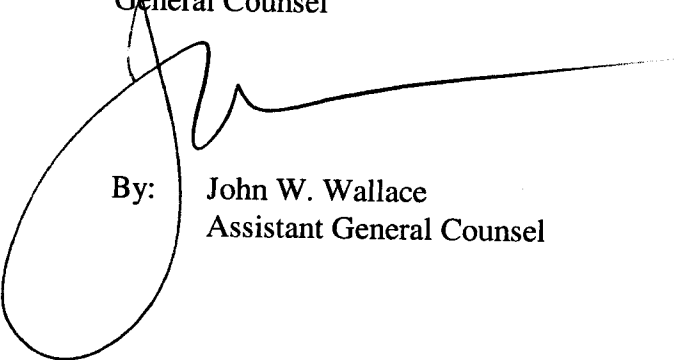
Social conversations with employees of your former agency that are not aimed at influencing its administrative or legislative actions are not prohibited by the ban. (*Tobias* Advice Letter, No. A-96-089.) (Section 87406(d)(1).) Of course, whether a particular contact is for the purpose of influencing administrative or legislative action or a specific proceeding (as defined by Regulation 18746.2) depends on the facts of each case.

Accordingly, for purposes of the one-year ban under Section 87406, the Act does not prevent you from communicating with your former agency, but it limits your communications as described above.

If you have any additional questions, please feel free to call me at (866) 275-3772.

Sincerely,

Scott Hallabrin
General Counsel

By:  John W. Wallace
Assistant General Counsel

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