



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

February 10, 2010

Kurt A. Schaefer  
150 Silva Ct.  
Folsom, CA 95630

Re: Your Request for Advice  
**Our File No. A-10-019**

Dear Mr. Schaefer:

This letter responds to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the "Act").<sup>1</sup> 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. 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 such provisions as Government Code Section 1090, or other post-government employment laws such as Public Contract Code Section 10411.

### QUESTION

Does the Act's "permanent ban" bar you from accepting a consulting position with an architectural firm hired by a private legal firm to represent the State of California on a lawsuit involving a project that you oversaw before you retired from state service?

### CONCLUSION

No. The permanent ban would prevent you from assisting a party other than the State of California, but because the architectural firm for which you would consult is working for the State of California, the ban does not apply.

### FACTS

Before your retirement from state service in 2006, you were a Deputy Director of the Facilities Development Division ("FDD") of the Office of Statewide Health Planning and Development ("OSHPD"). FDD is the state agency that regulates the design and construction of acute care hospitals in California. As a Deputy Director, you were

---

<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.

responsible for setting policy and making executive level decisions on various projects handled by the office. One of these projects was the University of California, Los Angeles's effort to replace its acute care hospital. FDD reviewed the design and oversaw the project.

In 2008, the hospital was completed and the contractor filed a claim against UCLA for materials and delay time. UCLA retained a legal team, who in turn retained an architectural firm to analyze the project and the claim. This architectural firm would like to hire you as an expert to examine the OSPHD process and how that process might have affected the timeline for the project.

### ANALYSIS

Public officials who leave state service are subject to two types of post-governmental restrictions under the Act, colloquially known as the "revolving door" prohibitions.

The two post-governmental restrictions are:

The one-year ban: a one-year ban prohibits certain state employees from appearing before or communicating, for compensation, with their former agencies if the appearance or communication is made for the purpose of influencing administrative or legislative action or the issuance of a permit, license, grant or contract, or the sale or purchase of goods or property. (Section 87406, Regulation 18746.1.)

The one-year ban obviously would not apply as you retired from state service several years ago.

The permanent ban: A permanent ban prohibits a former state employee from "switching sides" to participate, for compensation, in a 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. (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).)

Additionally, unlike the one-year ban, which applies only if a former governmental employee appears before or communicates with his or her former governmental employer, the permanent ban also prohibits a former governmental employer from "aiding, advising, counseling, consulting, or assisting in representing" any

other person in any proceeding in which the former governmental employee would be prohibited from participating. (Section 87402.)

You have explained that you are considering consulting with an architectural firm that is contracting with the legal team for UCLA, a state agency for purposes of the Act. The Act prohibits you from aiding, etc., any *other* person (other than the State; see Sections 87401 and 87402), but in this case, you would be aiding and assisting the State of California in its efforts to defend itself in this lawsuit. For this reason, the permanent ban does not prohibit you from accepting this position.

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