



FAIR POLITICAL PRACTICES COMMISSION

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October 10, 2011

Bill Maile, Director of Communications
5033 8th Avenue
Sacramento, CA 95820

Re: Your Request for Informal Assistance
Our file No. I-11-160

Dear Mr. Maile:

This letter responds to your request for advice regarding the post-governmental restrictions of the Political Reform Act (the "Act").¹ Because your inquiry is general in nature and does not involve specific governmental decisions we are treating it as a request for informal assistance.²

Please note that our advice is based solely on the Act. We therefore offer no opinion on the application, if any, of other post-government employment laws such as Public Contract Code Section 10411 or on any incompatible activities restrictions your agency may impose under Government Code Section 19990. We also offer no advice on the application, if any, of Government Code Section 1090.

Additionally, this letter should not be construed as advice on any conduct that may have already taken place. This letter is based on the facts presented. The Fair Political Practices Commission ("Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71; Section 83114.)

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTION

When you leave state service and start your own consulting firm, what restrictions would the Act place on your contacts with your former agency, the California Technology Agency (“CTA”)?

CONCLUSION

The one-year ban would prohibit you from communicating with CTA or the employees of the CTA, for one year after you leave the agency, if the communication is for the purpose of influencing any legislative or administrative action, or influencing 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.” Therefore, you may *not* appear before or communicate with the CTA regarding the issuance, amendment, or awarding of *any contracts* (including your company’s consulting contracts to perform public relations and communications services) for a period of one year after you leave state service.

In addition, the permanent ban is a lifetime ban that prohibits you from participating in any judicial, quasi-judicial or other proceeding in which you participated while a state administrative official at the CTA or any other state agency where you previously worked.

FACTS

You were Director of Communications at the CTA. You were appointed to this position by Governor Schwarzenegger in March 2008. Your position did not require you to participate in state policy or procurement decisions.

Beginning in September 2011 you are starting your own business, Maile Communications, a sole proprietorship. You will be providing communications and public relations consulting services and advice to private-sector clients. Your consulting services may include advising clients on ways to conduct business with the state. Your services could include speech writing and advising on public relations strategy. However, you do not plan to represent clients to influence policy or regulatory decisions.

You also plan to host a publicly available website to post public information related to state government technology issues. You plan to gather public information, such as policies, technology project information, and news from the CTA and other state agencies and departments.

You wish to know what restrictions the Act would place on your contacts with the Technology Agency and other state departments after leaving state service. Specifically, you wish to know if there are any restrictions concerning your company contracting directly with the state to perform public relations and communications consulting services such as speech writing and public relations strategy.

ANALYSIS

Post-Governmental Employment Restrictions

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. In addition, Section 87407 prohibits certain state and local officials from making, participating in making, or using their official position to influence decisions affecting persons with whom they are negotiating employment, or have any arrangement concerning employment. (Section 87407; Regulation 18747.)

- **One Year Ban:** This ban prohibits a public official from appearing for compensation before his or her former agency, or officer or employee thereof, for the purpose of influencing any administrative, legislative or other specified action (including contracts);
- **Permanent Ban:** This ban prohibits a former state administrative official from advising or representing any person, other than the State of California, for compensation in any judicial, quasi-judicial or other proceeding in which the official participated while in state service. (See Sections 87401-87402, Regulation 18741.1); and
- **Restrictions on Negotiating Prospective Employment:** This prohibition restricts public officials from negotiating or making any arrangement concerning prospective employment (section 87407, regulation 18747).

Because your questions relate only to the “one-year ban” and the “permanent ban,” we limit our discussion to those areas.

The One-Year Ban

The one-year prohibition applies to employees who are designated or should be designated in their former agency’s conflict-of-interest code. As Director of Communications for the CTA, you are a designated employee. Therefore, for one year after leaving the CTA you may not communicate with your former agency in an attempt to influence any transaction involving legislative or administrative action³ or other specified action—including contracts.

³ For purposes of section 87406, the Act defines “administrative action” and “legislative action” as the following: “‘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 . . .” (Section 82002(a).)

“‘Legislative action’ means 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 82037.)

Once you left your position, the point at which you were no longer authorized to perform the duties of your job at the CTA and you stop performing them, the Act's one-year ban and the permanent ban applied. (*Coler Advice Letter*, No. I-07-089.)

Communications Covered by the One-Year Ban

Not all communications to a former state administrative agency employer are prohibited by the one-year ban. The ban extends only to those communications for the purpose of influencing any legislative or administrative action, or influencing 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." (Section 87406(d)(1); Regulation 18746.1(b)(5).)

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." (Regulation 18746.2(a).)

Therefore, you may *not* appear before or communicate with the CTA regarding the issuance, amendment, or awarding of *any contracts* for a period of one year after you leave state service.⁴ This includes your company's consulting contracts to perform public relations and communications services.

There are certain types of communications that are *not* restricted under the one-year ban. For instance, it is not considered a prohibited communication under the one-year ban, if an individual: "(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).)

Therefore, there is no restriction on your hosting a publicly available website to post public information related to state government technology issues. You may also request public information relating to policies, technology project information, and news from the CTA and other state agencies and departments.

⁴ However, you may appear before or communicate with the CTA for the purpose of administering, implementing, or fulfilling the requirements of a pre-existing contract or project, so long as the services do not involve the issuance, amendment, awarding, or revocation of a permit, license, agreement or contract, or the sale or purchase of goods or property. (Regulation 18746.1(b)(5)(A); *Quiring Advice Letter*, No. A-03-272; *Hanan Advice Letter*, No. I-00-209.)

The Permanent Ban

The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial or other proceeding in which you participated while a state administrative official at the CTA or any other state agency. (Sections 87401 and 87402.) Thus, a public official may never “switch sides” in a proceeding after leaving state service.

As the Director of Communications at the CTA, you are a state administrative official for purposes of the Act. Therefore you are subject to the permanent ban once you leave state service. (Section 87400(b).) To determine if the permanent ban applies to your situation, you would need to identify the proceedings in which you participated while employed by the state, if any.

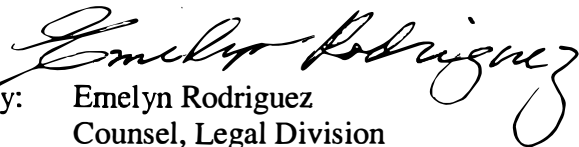
You have not provided any facts or details about specific proceedings that appear to implicate this prohibition. Nevertheless, you should be aware of this provision as it is specifically applicable to any judicial, quasi-judicial or other proceedings you may have participated as Director of Communications. “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).)

We have enclosed a copy of our fact sheet, “Revolving Door and Other Post-Employment Issues,” which provides more detailed information. In the future, should you have questions regarding a specific governmental decision, please contact us for further advice.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: 
Emelyn Rodriguez
Counsel, Legal Division

ER:jgl

Enclosure