



FAIR POLITICAL PRACTICES COMMISSION

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October 13, 2011

Dr. Conrado Barzaga
2257 Poppy Avenue
Upland, CA 91784

Re: Your Request for Advice
Our file No. A-11-167

Dear Dr. Barzaga:

This letter responds to your request for advice regarding the post-governmental employment restrictions (“revolving door”) provisions of the Political Reform Act (the “Act”).¹

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 or on any incompatible activities restrictions your agency may impose. 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.)

QUESTIONS

1. Do the Act’s revolving door provisions prohibit you from pursuing a professional opportunity as Executive Director of the Dental Health Foundation (the “Foundation”) given the organization has applied for a grant or contract with your employer, First 5 LA, a local government entity?
2. If you are offered a position with the Foundation, would it disqualify the Foundation’s application or contract, and may you participate in decisions made by the Foundation regarding the project?

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.

3. If you are not selected to serve as the Executive Director for the Foundation, may you resume your duties as program officer and oversee an established contract?

CONCLUSIONS

1-2. Local government officials who leave governmental service are subject to the Act's one-year ban for local officials in Section 87406.3, also known as the "local one-year ban." However, Section 87406.3's one-year prohibition, only applies to local elected officials, chief administrative officers of a county, city managers, or general managers or chief administrators of a special district who held a position with a local government agency as defined in Section 82041.

Because your position as Senior Program Officer with First 5 LA, is not a position enumerated under Section 87406.3, the revolving door prohibitions of the Act do not apply to your situation. Nothing in the Act prohibits you from pursuing a professional opportunity as Executive Director of the Foundation, from communicating with your former agency, or participating in Foundation decisions regarding the project. The Foundation's application or contract would not be disqualified merely because you worked on the project.

However, if you have sufficiently discussed the prospect of your future employment with the Foundation to be considered part of a "negotiation," you would be prohibited, pursuant to Section 87407, from making, participating in the making, or using your official position with First 5 LA to influence any governmental decisions that impacts the Foundation.

3. If you are not selected to serve as the Executive Director for the Foundation, you may resume your duties as program officer and oversee an established contract.

FACTS

You are currently employed as a Senior Program Officer with Los Angeles County Commission on Children and Families First Proposition, ("First 5 LA") that was established by "The Children and Families First Act" of 1998. While First 5 LA is not a Los Angeles County government agency, its code reviewing body is the County of Los Angeles. It is a quasi-local government agency that receives state funds.

In 2006, prior to your employment at this Commission, the First 5 LA's Board of Commissioners established a funding initiative to support children's access to oral health. In January 2011 the Board of Commissioners decided to make funds available to eligible nonprofit organizations through various Requests for Proposals ("RFPs") related to oral health. First 5 LA staff was then asked to release a public RFP and engage an "Ad Hoc Committee" to advise your work and further development of RFPs. You have participated in the release of the one of the RFPs, and one of the RFPs was released on June 30, 2011. The deadline for applications or proposals was August 31, 2011.

You recently learned that the Foundation, a nonprofit organization has a job opening for an Executive Director. You are planning to submit a letter of interest and resume to the Foundation.

On September 1, 2011, you were notified by your department's assistant that the Foundation submitted an application in response to the oral health RFP that you had participated in and developed. However, you disclosed your situation to your department director on September 6, 2011 and have not participated in any grant or contract award decisions relating to the RFP. You have not participated in discussions related to the RFP, interviews, or site visits, as to avoid the appearance of participating in or influencing award decisions relating to the Foundation.

You wish to know if the Act's revolving door provisions prohibit you from pursuing a professional opportunity as Executive Director of the Foundation given the organization has applied for a grant or contract with First 5 LA.

You also wish to know if you are offered a position with the Foundation, if it would disqualify the Foundation's application or contract, and if you may participate in decisions made by the Foundation regarding the project.

In addition, you wish to know if you are not selected to serve as the Executive Director for the Foundation, if you may resume your duties as program officer and oversee an established contract if the decision was made to approve it without your participation.

ANALYSIS

Post-Governmental Employment Restrictions

Revolving Door (Section 87406.3):

Local government officials who leave governmental service are subject to the Act's one-year ban for local officials in Section 87406.3, also known as the "local one-year ban." Generally, this restriction prohibits certain former local officials from communicating with their former agencies, for compensation and in representation of another person, for the purpose of influencing any legislative or administrative actions, including quasi-legislative and quasi-judicial actions, or any discretionary actions involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.

However, Section 87406.3's one-year prohibition, only applies to local elected officials, chief administrative officers of a county, city managers, or general managers or chief administrators of a special district who held a position with a local government agency as defined in Section 82041.

Please note that Section 87406.3(c) does not preclude a local governmental agency from adopting its own ordinance or policy restricting the activities of former agency officials so long as the ordinance or policy is more restrictive than Section 87406.3.

Because your position as Senior Program Officer with First 5 LA is not a position designated under Section 87406.3, the revolving door prohibitions of the Act do not apply to you. Therefore, nothing in the Act would prohibit you from pursuing an employment opportunity with the Foundation or communicating with your former agency for the purpose of influencing any legislative or administrative actions, including quasi-legislative and quasi-judicial actions, or any discretionary actions involving the issuance, amendment, awarding, or revocation of a permit, license, grant or contract, or the sale or purchase of goods or property.

Furthermore, nothing in the Act prohibits you from participating in decisions concerning the Foundation regarding the project so long as you are not negotiating, and do not have an arrangement for, prospective employment (discussed below). Thus, you may resume your duties as program officer and oversee an established contract with the Foundation if you are not selected for the executive director's position, assuming that you are not negotiating, and do not have an arrangement for, another position.

Influencing Prospective Employment:

The ban on influencing prospective employment prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement. (Section 87407; Regulation 18747.) This law expands the Act's conflict-of-interest rules and related disqualification obligations to situations where a decision will have a reasonably foreseeable material financial effect on the prospective employer even though the official does not yet have an economic interest in the employer.

Section 87407, the ban against influencing prospective employment, provides: "No public official, shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any arrangement concerning, prospective employment."

The term "public official" is defined, in part, in Section 82048 as ". . . every member, officer, employee or consultant of a state or local government agency. . ." First 5 LA is a local government agency, and as an employee working for First 5 LA, you are subject to this ban.

"A public official is 'negotiating' employment when he or she interviews or discusses an offer of employment with an [potential] employer or his or her agent." (Regulation 18747(c)(1).) The Commission has construed the scheduling, conduct, and follow-up to an interview as one continuous process falling under the definition of "negotiating" employment. (*Bonner Advice Letter*, No. I-98-287.) However, the mere act of sending a resume or application to a specific entity has not been considered "negotiating." Similarly, entertaining informal inquiries about

your future plans and receiving expressions of general interest in discussing potential employment opportunities at some point in the future is not considered "negotiating." (Id.)

"A public official has an 'arrangement' concerning prospective employment when he or she accepts an employer's offer of employment." (Regulation 18747(c)(2).)

You state that you have submitted a letter of interest and resume to the Foundation, but have made no other contacts with the Foundation with regard to future employment. Therefore, the ban has not yet been triggered.

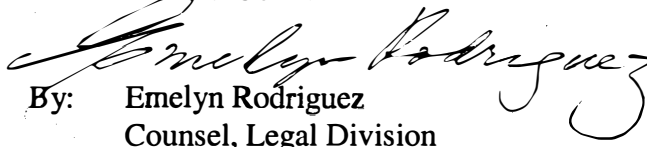
However, please note that if you have sufficiently discussed the prospect of your future employment with the Foundation to be considered part of a "negotiation," you would be prohibited, pursuant to Section 87407, from making, participating in the making, or using your official position with First 5 LA to influence any governmental decisions with a reasonably foreseeable material financial effect on the Foundation.

We have enclosed a copy of our fact sheet, "Leaving Local Government Service: Revolving Door and Other Post-Employment Issues For Local Officials" which provides more detailed information.

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