



FAIR POLITICAL PRACTICES COMMISSION

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March 13, 2014

Hector D. Davila, PE
35085 Willow Springs Drive
Yucaipa, CA 92399

**Re: Your Request for Advice
Our File No. A-14-046**

Dear Mr. Davila:

This letter is in response to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the "Act"). Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other laws that may apply such as the post-employment provisions of Public Contract Code Section 10411. 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.)

QUESTIONS

(1) For on-going Architectural & Engineering (A&E) contracts that have already been awarded to your new private-sector employer (the "firm"), may you:

- (a) Represent the firm in these on-going contracts with Caltrans in Districts 7, 8, and 12?
- (b) Represent the firm in these on-going contracts when a local agency such as Riverside County Transportation Commission (RCTC), Riverside County Transportation Department (RCTD), Orange County Transportation Authority (OCTA) are the hiring agency in and have been delegated the authority by Caltrans to Advertise, Award, and Administer (AAA) projects in Caltrans in Districts 7, 8, and 12?

(2) For any future delegated AAA projects that your new employer is pursuing will you be able to represent the firm within this "one year ban" period where a local agency is the hiring agency?

CONCLUSIONS

(1)(a) and (b). Appearances or communications before a former state agency employer, made as part of services performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement may be excluded from the one-year prohibition provided the services do not involve the issuance, amendment, awarding, or revocation of any of these actions or proceedings.

(2) You ask about future contracts that your employer may be pursuing. You are prohibited for one year from appearing in connection with the future contracts. However, similar to the above situations, you may appear after a contract has been awarded to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement provided the services do not involve the issuance, amendment, awarding, or revocation of any of these actions or proceedings.

FACTS

You are currently the Deputy District Director of Construction for the California Department of Transportation (Caltrans) in District 8. You are responsible for the construction activities within the state transportation system right-of way. District 8 covers all of San Bernardino and Riverside County.

After March 7, 2014, you will no longer work for Caltrans and will be employed by a private consulting firm beginning March 10. You are requesting clarification to the following questions in regards to post government employment restriction of the Political Reform Act as it pertains to the one-year ban.

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” prohibition and the permanent ban on “switching sides.” The first restriction is the “permanent ban” prohibiting a former state employee from “switching sides” and participating, for compensation, in any specific proceeding involving the State of California if the proceeding is one in which the former state employee participated while employed by the state (see sections 87401-87402, regulation 18741.1). The second restriction is the “one-year ban” prohibiting a state employee from communicating, for compensation, with his or her former agency for the purpose of influencing certain administrative or legislative action (see section 87406, regulation 18746.1).

You asked specifically about the one-year ban, thus we do not discuss the permanent ban further in this letter.

Section 87406 of the Act prohibits specified officials from acting as an agent or attorney or otherwise representing, for compensation, “any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof,” for one-year after the official left the

agency's employment "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) further provides:

"(a) For purposes of Government Code Section 87406, a formal or informal appearance or oral or written communication is for the purpose of influencing if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action or proceeding. An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding with in writing or by electronic transmission, attending a meeting, and delivering or sending any communication."

As a district director for Caltrans District 8, you were a "designated employee" under the Act (i.e., a decision-making employee whose position is designated in a state agency's conflict of interest code, and who is required to file an annual statement of economic interests). As a designated employee of Caltrans who has left state service, the Act's one-year ban applies to you. (Section 87406(d)(1); Regulation 18746.1(a)(2).)

Regulation 18746.1(b) provides guidance about when the one-year ban will apply. Under that 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. However, the prohibitions of Government Code Sections 87401 and 87402 may apply.

“(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.”

Agencies Covered by the One-Year Ban.

A designated employee’s state administrative agency means the agency for which he or she worked or represented, or any board or commission under the agency’s control. (*Gould* Advice Letter, No. A-96-077.) The agency you worked for was Caltrans. While your facts indicate that you worked specifically for District 8 and you ask about work with other districts, we have consistently advised that former employees of Caltrans working within a Caltrans district are prohibited from appearing before Caltrans, including all Caltrans districts and employees. (See e.g., *Keel* Advice Letter, No. I-05-140.) As a result, you may not for one year, for compensation, act as a representative or agent for any person before Caltrans, or Caltrans districts “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.” (Section 87406.)

Other Communications

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.” (Regulation 18746.2(a).)

However, certain communications are not restricted under the one-year ban. Appearances or communications before a former state agency employer, made as part of “services performed to administer, implement, or fulfill the requirements of an existing permit, license, grant, contract, or sale agreement may be excluded from the [one-year] prohibitions. . . provided the services do not involve the issuance, amendment, awarding, or revocation of any of these actions or proceedings.” (Regulation 18746.1(b)(5)(A); *Quiring* Advice Letter, No. A-03-272; *Hanan* Advice Letter, No. I-00-209.)

It is also 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

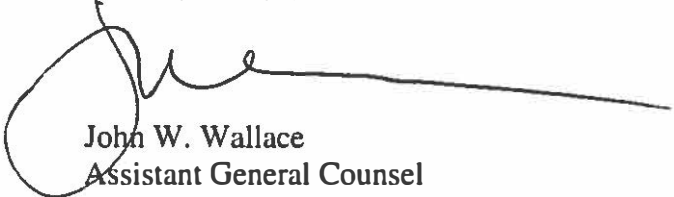
“(4) Communicates with the press.” (Regulation 18746.2(b)(1)-(4).)

Thus, the one-year ban does not prevent you from requesting information generally available to the public about agency business from Caltrans or other state agencies. Nor does it prohibit you from attending informational meetings of Caltrans or another state agency regarding existing laws, regulations, or policies, as long as you do not attempt to influence the agency’s legislative or administrative action. (Section 87406(d)(1).) Whether a particular meeting or conversation is for the purpose of influencing administrative or legislative action (as defined by Regulation 18746.2) depends on the facts of each case.

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

Sincerely,

Zackery P. Morazzini
General Counsel

A handwritten signature in black ink, appearing to read "John W. Wallace", with a large loop at the beginning and a long horizontal stroke extending to the right.

John W. Wallace
Assistant General Counsel
Legal Division