



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 18, 2016

Debra Hill
7051 Westmoreland Way
Sacramento, Ca 95831

Re: Your Request for Advice
Our File No. A-16-026

Dear Ms. Hill:

This letter responds to your request for advice regarding the “revolving door” provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

As a former employee of the Department of Motor Vehicles (DMV), what restrictions do the Act’s “revolving door” provisions place on your prospective employment as a Communications and Membership Assistant with International Registration Plan, Inc. (IRP, Inc.)?

CONCLUSION

Based on your description of your job duties at IRP, neither the revolving door’s “one year ban” nor “permanent ban” prohibit you from performing such duties.

FACTS

You are currently an Assistant Division Chief/Program Manager at DMV. Your responsibilities include overseeing the department’s Registration Policy Unit, legislation implementation, and program evaluation. Your position was designated in the DMV Conflict of Interest Code. Until March 1, 2016, you concurrently served on the board of IRP, Inc., a non-profit organization that provides services, education, and information to help member organizations comply with the International Registration Plan (IRP); IRP is a reciprocity agreement between 48 U.S. states, the District of Columbia, and ten Canadian provinces that recognizes commercial motor vehicles registrations across jurisdictions.

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.

You plan to retire from DMV within the next four to six months, and have an opportunity to work at IRP, Inc. in a part-time/telecommuting capacity, primarily providing communications, database, and administrative support. More specifically, your duties will include:

- Updating the organization's membership database.
- Developing and editing content for the IRP, Inc. website.
- Writing e-mail newsletters for organization members.
- Performing research.
- Supporting the organization's efforts to amend the IRP ("ballot process management").
- And arranging travel for board members and staff.

ANALYSIS

Revolving Door Law, Generally

Public officials who leave state service are subject to two types of post-governmental employment provisions under the Act: the one-year ban and the permanent ban. Together, these restrictions are commonly referred to as the "revolving door" prohibitions.²

One-Year Ban

The "one-year ban" prohibits a former state employee from making, for compensation, any formal or informal appearance, or making any oral or written communication, before his or her former agency for the purpose of influencing any administrative or legislative actions 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. (See Section 87406; Regulation 18746.1.) For purposes of Section 87406, the Act defines "administrative action" and "legislative action" as:

" '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.)

² Note that Sections 87407 and 87100 of the Act also prohibit public officials from making, participating in making, or using their position to influence decisions affecting persons with whom they are negotiating employment, or have any arrangement concerning employment.

The one-year ban applies to any employee of a state administrative agency who holds a position that is designated or should be designated in the agency's conflict-of-interest code. (Section 87406(d)(1); Regulation 18746.1(a)(2).) The ban applies for twelve months from the date the employee permanently leaves state office or employment. While in effect, the one-year ban applies only when a former employee or official is being compensated for his or her appearances or communications before his or her former agency on behalf of any person as an agent, attorney, or representative of that person. (Regulation 18746.1(b)(3) and (4).)

The one-year ban applies to "any appearance or communication 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 18746.1(b)(5).) An appearance or 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." (Regulation 18746.2.) An appearance or communication includes, but is not limited to, conversing by telephone or in person, corresponding in writing or by electronic transmission, attending a meeting, and delivering or sending any communication. (*Ibid.*)

Finally, appearances and communications are prohibited only if they are (1) before a state agency that the public official worked for or represented, (2) before a state agency "which budget, personnel, and other operations" are subject to the control of a state agency the public official worked for or represented, or (3) before any state agency subject to the direction and control of the Governor, if the official was a designated employee of the Governor's office during the twelve months before leaving state office or employment. (Regulation 18746.1(b)(6).)

However, the one-year ban does not prohibit all communications. 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" are not subject to the one-year ban, "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.)

Likewise, Regulation 18746.2(b)(1)-(4) provides that appearances or communications are not restricted 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."

Without violating the one-year ban, a former agency official may also draft proposals on a client's behalf to be submitted to the official's former agency, so long as the former official is not

identified in connection with the client's efforts to influence the agency. (*Cook* Advice Letter, No. A-95-321; *Harrison* Advice Letter, No. A-92-289.) Similarly, a former agency official may use his or her expertise to advise clients on the procedural requirements, plans, or policies of the official's former agency so long as the employee is not identified with the employer's efforts to influence the agency. (*Perry* Advice Letter, No. A-94-004.)

The one-year ban and your work for IRP, Inc.

Regarding your new position with IRP, Inc., you will be prohibited from appearing before DMV or communicating with DMV on behalf of IRP, Inc. for one year, if the purpose of your appearance or communication is to influence administrative or legislative action. Assuming your duties at IRP do not involve influencing administrative or legislative action, the one-year ban would not apply.

Permanent Ban

The "permanent ban" prohibits a former state employee from "switching sides" and participating, for compensation, in any specific 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 and 87402; Regulation 18741.1.) The permanent ban applies when an official has permanently left or takes a leave of absence from any particular office or employment. (Regulation 18741.1(a)(1).)

The permanent ban is a lifetime ban and applies to any formal or informal appearance or any oral or written communication—or aiding, advising, counseling, consulting, or assisting in representing any other person, other than the State of California, in an appearance or communication—made with the intent to influence any judicial, quasi-judicial, or other proceeding in which you participated while you served 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).)

Additionally, an official is considered to have "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).)

A former state official who held a management position in a state administrative agency is deemed to have participated in a proceeding if: (1) the proceeding was pending before the agency during his or her tenure, and (2) the proceeding was under his or her supervisory authority. (Section 87400(d); Regulation 18741.1(a)(4).) However, proceedings are not under an official's "supervisory authority" merely because the supervisor is responsible for the general oversight of the administrative actions or functions of a program, where the responsibilities concerning the specific or final review of the proceedings are expressly delegated to other persons in the agency's structure and the supervisor is not involved in the actual proceedings. (Regulation 18741.1(a)(4); see also *In re Lucas* (2000) 14 FPPC Ops. 15.)

Furthermore, “[t]he permanent ban does not apply to a ‘new’ proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A ‘new’ proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings.” (*Rist* Advice Letter, No. A-04-187; also see *Donovan* Advice Letter, No. I-03-119.) New contracts with the employee’s former agency in which the former employee did not participate are considered new proceedings. (*Leslie* Advice Letter, No. I-89-649.) A new contract is one that is based on new consideration and new terms, even if it involves the same parties. (*Ferber* Advice Letter, No. I-99-104; *Anderson* Advice Letter, No. A-98-159.) In addition, the application, drafting, and awarding of a contract, license, or approval is considered to be a proceeding separate from the monitoring and performance of the contract, license, or approval. (*Anderson*, *supra*; *Blonien* Advice Letter, No. A-89-463.)

The permanent ban and your work for IRP, Inc.

As stated above, the permanent ban applies to any formal or informal appearance or any oral or written communication, or aiding, advising, counseling, consulting, or assisting in representing any other person, other than the state, in an appearance or communication made with the intent to influence any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official. Thus, so long as your duties as an employee of IRP do not involve appearing before or communicating with DMV, or assisting IRP with the intent of influencing a judicial, quasi-judicial or other proceeding involving the State of California, the permanent ban will not apply.

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

Sincerely,

Hyla P. Wagner
General Counsel



By: Toren A. Lewis
Counsel, Legal Division

TAL:jgl