



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

December 7, 2018

Joemil Reguindin  
2361 Rosencrans Avenue, Suite 445  
El Segundo, CA 90245

Re: Your Request for Informal Assistance  
**Our File No. I-18-257**

Dear Mr. Reguindin:

This letter responds to your request for advice regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

Please note that we are only providing advice under the conflict of interest provisions of the Act. We offer no advice on other bodies of law that may apply including, but not limited to common law conflict of interest provisions or restrictions on incompatible activities. Because your request seeks general guidance, we are treating your request as one for informal assistance.<sup>2</sup>

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTIONS

1. May you provide fee-based consulting and representation involving the sales and use tax law to businesses being audited by the California Department of Tax and Fee Administration ("CDTFA"), as well as represent such businesses in compliance/collection matters and/or the negotiation of payment terms as it relates to their sales and use tax liabilities while simultaneously employed by the Board of Equalization ("BOE")?
2. May you provide fee-based consulting and representation services involving the sales and use tax law to businesses going through the appeals process with the California Office of Tax Appeals ("OTA") while simultaneously employed by the Board of Equalization?

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<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.

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

## CONCLUSION

The Act does not prohibit a state employee from simultaneously operating an independent business. However, should you do so, the Act prohibits you from making, participating in making, or using your position to influence a governmental decision that will have a reasonably foreseeable, material financial effect on your financial interests, such as your consulting business or your clients. Additionally, we must caution that your agency may impose restrictions on incompatible activities outside of the Act which may restrict your ability to accept this position. You should consult your agency's counsel regarding your agency's restrictions on incompatible activities.

## FACTS AS PRESENTED BY REQUESTER

You are currently a Business Taxes Specialist II for the California Board of Equalization, working under Board Member Jerome Horton. You are considering simultaneously providing fee-based consulting and representation services, involving California's sales and use tax, to businesses being audited by the California Department of Tax and Fee Administration and to businesses "going through the appeals process" with the California Office of Tax Appeals.

Your duties with the state previously involved acting as Board Member Horton's "principal technical advisor in matters involving sales and use tax audits, field office compliance and audit issues such as customer service, cash policy, medical/recreational marijuana tax administration and enforcement, negligence penalties, outreach, and education." You continued to advise Board Member Horton during adjudicatory deliberations until the Office of Tax Appeals began hearing sales and use tax matters on January 1, 2018. You have explained that, per the Taxpayer Transparency and Fairness Act of 2017 (Assembly Bill 102), "[t]he bill transferred to the [newly established] California Department of Tax and Fee Administration the various duties, powers, and responsibilities of the State Board of Equalization relating to the administration of various taxes and fees except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution, as specified, and the duty to adjust the motor vehicle fuel tax rate for the 2018-2019 fiscal year." Similarly, "the bill established in state government the Office of Tax Appeals," and "transferred to the office the various duties, powers, and responsibilities of the Board of Equalization necessary or appropriate to conduct appeals hearings, except for those duties, powers, and responsibilities imposed or conferred upon the board by the California Constitution, as specified." You further stated that, "[a]s of July 1, 2017, the BOE would no longer be responsible for administering and adjudicating sales and use tax matters and Franchise Tax Board appeals." You later clarified that the BOE continued to adjudicate sales and use tax appeals hearings until December 31, 2017, and the OTA took over that role the following day.

Today, your duties with the state include advising Board Member Horton on "Board of Equalization matters only." Anticipated duties as an independent, fee-based representative and consultant include "representing such businesses in compliance/collection matters and/or the negotiation of payment terms as it relates to their sales and use tax liabilities . . ."

## ANALYSIS

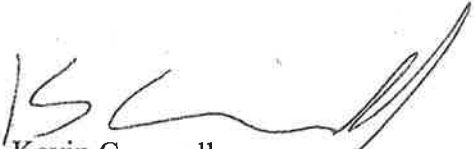
There is nothing in the Act that precludes you from operating an independent business while also employed by the state. However, the Act's conflict of interest provisions do prohibit you from making, participating in making or otherwise using your official position to influence a governmental decision in which you have a financial interest. (Section 87100.) An official has a financial interest in a decision only if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of the official's immediate family, or on any of the official's interests as specified in Section 87103. Those interests include "[a]ny source of income . . . aggregating five hundred dollars (\$500) or more in value provided or promised to, [or] received by, the public official within 12 months prior to the time when the decision is made." (Section 87103(c); see also Regulation 18700.1.)

Accordingly, if you begin operating a private business consulting with and representing companies, and a decision before you as a state employee involves your business or your clients, you may have a conflict of interest that will be disqualify you from taking part in the decision. Additionally, when contacting or appearing before any official in the CDTFA or OTA for the purpose of affecting a governmental decision implicating your business or a client, you must refrain from acting or purporting to act within your authority or on behalf of your agency, the BOE, in making the contact. (Regulation 18704(c); see also *Commission on Cal. State Gov. Org. & Econ. V. Fair Political Practices Commission* (1977) 75 Cal.App.3d 716, 723 ("[A] public official outside the immediate hierarchy of the decision-making agency may violate the conflict of interest law if he uses his official authority to influence the agency's decision.")) If you need assistance determining whether you are disqualified from any particular decision, you should seek additional advice describing the nature of the governmental decision.<sup>3</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel

By:   
Kevin Cornwall  
Counsel, Legal Division

KMC:jgl

<sup>3</sup> Note that you are also prohibited under the Act from taking part in a decision as a state employee if the decision will have a foreseeable and material effect on a prospective employer with which you are negotiating or have an arrangement for future employment. (Section 87407; Regulation 18747.)