



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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April 15, 2019

Lisa Marie Varner  
Training Unit - FMD  
Dept. of General Services  
Facilities Management Division (FMD)  
707 Third Street, 3rd Floor  
West Sac 95605-2811

Re: Your Request for Advice  
**Our File No. A-19-042**

Dear Ms. Varner:

This letter responds to your request for advice regarding the post-governmental employment and statement of economic interests reporting provisions of the Political Reform Act (the "Act").<sup>1</sup>

Please 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. Do the Act's post-governmental employment provisions restrict your ability to work with CPS HR on existing and future contracts?
2. Do you have reporting obligations on your statement of economic interests where your ownership interest consists of diversified mutual funds and exchange traded funds?

### CONCLUSIONS

1. No. 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.

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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.

Because your position as Training Coordinator with CPS HR is not a position enumerated under Section 87406.3, the revolving door prohibitions of the Act do not apply to your situation.

2. To the extent that you invest in diversified mutual funds registered with the SEC or an ETF that meets the requirements outlined in Regulation 18237, your interest in the fund is not a reportable investment.

### **FACTS AS PRESENTED BY REQUESTER**

You have recently been hired as an AGPA with the Department of General Services with the Facilities Management Division in Training. You previously held a position as Training Coordinator with CPS HR Consulting. You last day of employment there was February 22, 2019. CPS HR is a Joint Powers Authority ("JPA"). The members of the JPA are public agencies. They include cities, counties, and special districts. None of the member agencies are state agencies.

You note that you were the contract contact while at CPS HR, and you are named on contracts that CPS HR entered into with DGS as the Training Coordinator. In your new role at DGS, you may be asked to attend conference calls, participate in scheduling services, schedule training classes, or work with CPS HR on future contracts, and seek advice on the application of the post-governmental employment restrictions of the Act.

You recently started an IRA through Merrill Lynch, and anticipate investing funds in both mutual funds and exchange traded funds. You note that your investment portfolio is controlled by an algorithm and that you do not instruct your financial advisor as to specific investments. You seek clarification concerning the reporting rules for these types of investments so that you may avoid any potential conflicts of interest.

### **ANALYSIS**

#### *Post-governmental Employment Restrictions*

Local governmental 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." Section 87406.3(a) provides:

A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041 shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, 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.

As provided in Regulation 18746.3(a), the local one-year ban applies to any public official who holds any of the following positions:

- (1) Local elected official.
- (2) Chief administrative officer of a county.
- (3) City manager, including the chief administrator of a city.
- (4) General manager or chief administrator of a special district who holds a position with a local government agency as defined by Section 82041, including the general manager or chief administrator of an air pollution control district or air quality management district.

For purposes of the Act, CPS HR is a local governmental agency, as it is a JPA comprised of local government entities. As the former Training Coordinator with CPS HR, you are not a public official subject to the local one-year ban under Regulation 18746.3(a)(3). While the Act does provide a permanent ban applicable to certain proceedings (Section 87400 et seq.), this ban applies only to state officials.

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.

*Investment Interests in Diversified Mutual Funds and ETFs:*

Section 82034 provides a definition of the term “investment” under the Act, however, the definition excludes interests in diversified mutual funds registered with the SEC:

The term ‘investment’ does not include a time or demand deposit in a financial institution, shares in a credit union, any insurance policy, interest in a diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or a common trust fund which is created pursuant to Section 1564 of the Financial Code ...

Additionally, Regulation 18237 provides:

...the term “investment” does not include a fund, including an exchange traded fund (ETF), closed-end fund or fund held in a plan qualified under Sections 401(k), 403(b), 457 or similar provision of the Internal Revenue Code (qualified plan), that is substantially similar to a “diversified mutual fund registered with the Securities and Exchange Commission under the Investment Company Act of 1940” if all the following are met:

- (1) The fund is a bona fide investment fund that pools money from more than 100 investors and invests the money in stocks, bonds, or other

securities.

(2) The fund holds securities of more than 15 issuers.

(3) The public official did not influence or control the decision to purchase or sell the specific fund on behalf of his or her agency during the applicable reporting period.

(4) The public official does not influence or control the selection of any specific investment purchased and sold on behalf of the fund.

(5) The fund does not have a stated policy of concentrating its holdings in the same industry or business.

(b) For purposes of subdivisions (a)(1) and (a)(2), an ETF, closed-end fund or qualified plan is presumed to have more than 100 investors and hold securities of more than 15 issuers.

Pursuant to the specific language of Section 82034, the term "investment" does *not* include an interest in a diversified mutual fund registered with the SEC and any investments in ETFs that meet the criteria for being exempted from the definition of income pursuant to the guidelines in Regulation 18237. To the extent that you choose to invest in mutual funds registered with the SEC and ETFs that meet the requirements outlined in Regulation 18237, you would not have reportable investments under the Act. Also, for purposes of the Act's conflict of interest provisions, any interests you have in non-reportable mutual funds and ETFs are not potentially disqualifying financial interests.

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Zachary W. Norton  
Senior Counsel, Legal Division

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