



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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December 10, 2019

Ronald W. Beals
213 Delta Oaks Way
Sacramento, CA 95831

Re: Your Request for Advice
Our File No. A-19-222

Dear Mr. Beals:

This letter responds to your request for advice regarding the post-government provisions of the Political Reform Act (the "Act").¹ Please note that we are only providing advice under the post-governmental employment provisions of the Act. We therefore offer no opinion on the application, if any, of other post-government employment laws, such as Public Contract Code section 10411, or rules of professional responsibility. Also, 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. Lastly, the Commission does not provide advice with respect to past conduct and this advice letter applies only to prospective actions. (Regulation 18329(b)(8)(A).)

QUESTIONS

As former Chief Counsel for Caltrans, are you prohibited under the permanent ban from participating as a representative for the California State Outdoor Advertising Association ("CSOAA") in the regulatory process related to proposed amendments to Title 4, Div. 6, California Code of Regulations, Section 2424, "Permit Renewal Process" ("Regulation 2424") or related to future amendments to Title 4, Div. 6, California Code of Regulations, Section 2422.1, "Permit Fee" ("Regulation 2422.1")?

CONCLUSIONS

No. The permanent ban applies to "judicial, quasi-judicial or other proceedings" proceedings that involve the State of California and a specific party or parties. The adoption, amendment, or repeal of regulations are not considered "judicial, quasi-judicial or other proceedings" covered by Sections 87401 and 87402, because these proceedings involve the formulation of rules of general application to be applied prospectively and not the rights or claims of specific parties.

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.

FACTS AS PRESENTED BY REQUESTER

In 2002, you were appointed Assistant Chief Counsel for Transportation Law at Caltrans Legal which included supervising legal work for the Outdoor Advertising Section. You were appointed Chief Counsel of the Department in February 2009. You retired from the Department in December 2014.

As Chief Counsel for Caltrans, you participated in litigation regarding the annual permit fee for outdoor advertising displays in the matter of *California State Outdoor Advertising Association et. al. v State of California, et. al.*, USDC, (ED Cal) No. Civ. S-05-0599 (final order filed 3-16-06). This matter arose in 2003, following Caltrans instituting an annual permit fee increase, from \$20 to \$92, pursuant to Business and Professions Code section 5485 (a), without following the rule-making provisions of the California Administrative Practices Act. Attorneys under your supervision defended this case. To comply with that decision, Caltrans adopted Regulation 2422.1, "Permit Fee." This regulation sets the amount of the annual fee, the fee increases for periods 2007-8 and 2012-13, the due date in for the fee in 2006, and states that the increased annual fee does not apply to five-year term permits until 2008. The regulation does not address the permit renewal process or late penalties.

Since March 2016 you have been employed by the California State Outdoor Advertising Association ("CSOAA"), the organization involved in the annual permit fee litigation, to assist on matters of interest to their members under direction of its Executive Director, a registered lobbyist. You wish to represent CSOAA before Caltrans regarding proposed amendments to Title 4, Div. 6, California Code of Regulations, Section 2424, "Permit Renewal Process."

Caltrans is currently in the process of amending the outdoor advertising display permit renewal process in Regulation 2424 in response to a 2017 decision in *OutFront Media LLC v. State of California, Department of Transportation*. Regulation 2424 implements Business and Professions Code section 5360, "Permit Renewal Process." The proposed amendments relate to clarifying the permit renewal process and penalties. The amendments do not affect the amount of the annual permit fees. According to Caltrans' Initial Statement of Reasons for the proposed amendments, the amendments were in response to the court's comments in the 2017 decision. The court's decision stated that Caltrans' permit renewal process was "rife with ambiguity regarding the procedures for pro-rata renewals and the renewal payment process." This case arose out of a late payment penalty fee paid to Caltrans in January 2014, which resulted in the 2017 ruling. You state you were not involved in that litigation. To your recollection, "there were never any legal issues involving [Regulation] 2424 while I was supervising the outdoor advertising attorneys or Chief Counsel and neither I, nor any Caltrans attorneys, have never done any work regarding that [regulation] until the 2017 litigation."

In reviewing the proposed amendments to Regulation 2424, CSOAA found the new procedures outlined in the proposed regulation to be unclear. On behalf of CSOAA, you wrote a letter to Caltrans on April 26, 2019 submitting comments and asking for clarification. You requested a meeting with Caltrans to resolve CSOAA concerns.

On October 9, 2019 Caltrans Chief Counsel, Jeanne Scherer, notified you that Caltrans would not meet with you because “you personally litigated the permit renewal process against the CSOAA” in your capacity as counsel for Caltrans in the 2006 matter of *California State Outdoor Advertising Association v State of California* and in that capacity, “you committed to submit a regulatory package to the Office of Administrative Law to amend Division 6 of Title 4” of the regulations. Her letter notes, however, that “the current regulatory package arises out of a separate circumstance.” Additionally, she states:

In order to avoid any appearance of impropriety or running afoul of the mandatory disqualification provisions of Cal. Gov. C. § 87400 et seq, Caltrans declines to give consent under Cal. Gov. C. § 87403(c) to meet with any representative from industry who has represented Caltrans before any court or participated in any process before a state administrative agency regarding the outdoor advertising permit renewal process.

As the former Chief Counsel, and supervisor of the legal division relating to outdoor advertising, you request advice as to the permanent ban and how it applies to your participation in Caltrans’ regulatory matters related to outdoor advertising.

ANALYSIS

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. These provisions are commonly referred to as the “revolving door” prohibitions. You left state service more than one year ago, so your questions relate to the application of the permanent ban.

Permanent Ban:

The permanent ban prohibits a former state employee from “switching sides” and participating for compensation in certain proceedings involving the state and other specific parties, 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 is a lifetime ban and applies to any formal or informal appearance or any oral or written communication made with the intent to influence “a judicial, quasi-judicial, or other proceeding” in which you participated while serving as a state administrative official. (Section 87401.) Specifically, Section 84701 states:

No former state administrative official, after the termination of his or her employment or term of office, shall for compensation act as agent or attorney for, or otherwise represent, any other person (other than the State of California) before any court or state administrative agency or any officer or employee thereof by making any formal or informal appearance, or by making any oral or written communication with the intent to influence, in connection with any judicial, quasi-judicial or other proceeding if both of the following apply:

- (a) The State of California is a party or has a direct and substantial interest.

(b) The proceeding is one in which the former state administrative official participated.

Moreover, you may not assist or advise others with regard to proceedings in which you are disqualified under Section 87401. (Section 87402.) For purposes of applying the permanent ban, it is essential to determine if the proceeding at issue is a “judicial, quasi-judicial or other proceeding,” as these terms are defined in Section 87400.

Judicial, Quasi-judicial or Other Proceeding

“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).) The adoption, amendment, or repeal of regulations are not considered “judicial, quasi-judicial or other proceedings” covered by these statutes, because they involve the formulation of rules of general application to be applied prospectively and not the rights or claims of specific parties. (*Huston* Advice Letter, No. A-84-002, *Sweeney* Advice Letter, No. A-98-022.) Therefore, the outdoor advertising permit regulatory adoptions, repeals or amendments proceedings are not a type of proceeding subject to the permanent ban. Additionally, any proceeding involving the rendering of a legal advisory opinion not involving a specific party or parties is specifically excluded from the definition of a “judicial, quasi-judicial or other proceeding.” (Regulation 18741.1(a)(4).)

Therefore, the permanent ban would not bar your participation as a representative of CSOAA in the amendment, repeal or adoption of regulations relating to the outdoor advertising permit matters before Caltrans. These proceedings involve the formulation of rules of general application to be applied prospectively and do not involve the rights or claims of specific parties.

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

Sincerely,

Dave Bainbridge
General Counsel



By: L. Karen Harrison
Senior Counsel, Legal Division

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