

California Fair Political Practices Commission

Leaving Local Government Employment

The Political Reform Act places two restrictions on the post-governmental activity of officials who leave local governmental service. These restrictions are a one-year ban applicable to high-level local officials (Section 87406.3) and a one-year ban applicable to officials and employees of air pollution control and air quality management districts (Section 87406.1). A third restriction, the ban on influencing prospective employment, prohibits current local officials from taking part in decisions that directly relate to a prospective employer. (Section 87407.)

The Local One-Year Ban (Section 87406.3)

The **local one-year ban** prohibits specified officials, for one year after leaving local government office or employment, from representing any other person, for compensation, by appearing before or communicating with their former agency in an attempt to influence the agency's decisions in an administrative or legislative action, whether quasi-legislative or quasi-judicial, or any action involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. This one-year ban also applies to an individual who is, at the time of the appearance or communication, an independent contractor of a local government agency or a public agency and is appearing or communicating on behalf of that agency. (Section 87406.3; Regulations 18746.2 and 18746.3.)

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. Former local agency officials should consult their former agency regarding any locally imposed restrictions.

Are you covered by the one-year ban?

The following officials are subject to the one-year ban of Section 87406.3:

- Local elected officials.
- Chief administrative officers of counties.
- City managers or chief administrative officers of cities.
- General managers or chief administrators of special districts, including general managers or chief administrators of air pollution control districts or air quality management districts. (Section 87406.3; Regulation 18746.3(a).)

Local government agencies include any county, city, or district of any kind including a school district, or any other local or regional subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. (Section 82041.)

Have you permanently left?

The local one-year ban applies when an official permanently leaves any particular office or employment subject to the ban. (Regulation 18746.3.) An official has permanently left an office or employment on the date on which the official is no longer authorized to perform the duties the office or employment and stops performing those duties, even if the official is still receiving compensation for accrued leave credits. (Regulation 18746.4(b).)

Under the local one-year ban, an official has not permanently left an office or employment if the official takes a leave of absence or serves as an intermittent employee. However, an official taking a leave of absence or serving as an intermittent employee is subject to the Act's conflict-of-interest provisions. (Regulation 18746.4(b); see also Commission Fact Sheet "Recognizing Conflicts of Interest.")

Tom, a city councilmember, also holds a position on the county's Vector Control Board. At the conclusion of his term on the city council, Tom retains his position on the Vector Control Board. Six months later a developer asks Tom to represent him before the city council. May Tom represent the developer? No, Tom has permanently left the local office, which is covered by the ban, and may not appear before the city council on the developer's behalf.

Steve left his county supervisor position in December and in January accepted a job as an independent contractor to advise a city on transportation related issues which is his expertise. Under Section 87406.3(b)(2), Steve may not appear before the county on behalf of the city because he is an independent contractor.

Are you making an appearance or a communication within 12 months of leaving local governmental office or employment?

The one-year ban applies to appearances and communications made within 12 months of permanently leaving local office or employment. An appearance or communication includes all of the following:

- Conversing by telephone or in person.
- Corresponding with in writing or by electronic communication.
- Attending a meeting.
- Delivering or sending any communication. (Regulation 18746.2.)

Betty resigns from her position as a city councilmember and accepts a job with Acme Real Estate. Within the year, the city council proposes new flood protection requirements, which Acme does not believe are necessary. On behalf of Acme, Betty calls her friend, Councilmember Jones, and informs Councilmember Jones that Acme staunchly opposes the new flood protection requirements. Betty has made an appearance or communication prohibited under the one-year ban.

The local one-year ban does not apply to assisting or advising clients or employers who might appear before or communicate with the official's former agency so long as the former official is not identified in connection with the appearance or communication.

Are you being compensated?

An appearance or communication is prohibited only if the former official is compensated, or promised compensation. (Regulation 18746.3.) "Compensation" is broadly defined to include "remuneration or payment of any kind." (Souza Advice Letter, No. A-06-114.) "Payment" is defined to mean a "payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.)

Note, however, that a payment made for necessary travel, meals, and accommodations received directly in connection with voluntary services is not considered compensation.

Jackson, a former county supervisor, is currently working as a volunteer for the Spotted Owl Foundation. Hoping to prevent a controversial development project, the Foundation has asked Jackson to appear before the board of supervisors. May Jackson appear before the board if the Foundation pays for his airfare to the meeting? The one-year ban does not bar Jackson from appearing because payments for necessary travel in connection with voluntary services are not considered compensation.

Are you representing another person?

The local one-year ban applies if the former official makes an appearance or communication in representation of another person. Appearances or communications in representation of any of the following are not prohibited:

- Another local government agency or any other public agency unless the former official is an independent contractor of the local government agency or public agency.
- The former official's personal interests as defined in Regulation 18704(d)(2), unless the appearance or communication is made in a quasi-judicial proceeding in which the official participated while serving as a local government employee or officer. (Regulation 18746.3.)

Kevin leaves his councilmember position on January 1 and accepts an engineering position as an employee with the county water district on January 15. On February 1, the city council proposes new flood protection requirements, and Kevin appears at the council's meeting on behalf of the water district to argue that the requirements are not adequate. Has Kevin violated the one-year ban? No, Kevin has not made a prohibited appearance or communication because Kevin is representing another public agency as an employee and not an independent contractor.

Are you making an appearance or communication for the purpose of influencing?

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.

The local one-year ban prohibits an appearance or communication if it is made for the purpose of influencing any of the following:

- An administrative action, including any action relating to any rule, regulation, or regulatory proceeding including a ratemaking proceeding, whether quasi-legislative or quasi-judicial. (Section 87406.3(d)(1); Regulation 18746.3.)
 - Quasi-legislative proceedings include those proceedings involving the adoption of rules of general applicability, including but not limited to annexations of territory to a city or district, adoption or amendment of zoning ordinances, adoption of regulations, or granting of franchises. (Regulation 18746.3.)
 - Quasi-judicial proceedings include those proceedings that determine the rights of specific parties, or apply existing laws to specific situations, including but not limited to any proceedings to issue or revoke licenses, building permits, zoning variances, conditional use permits, parcel and subdivision maps, or coastal development permits. (Regulation 18746.3.)
- A legislative action, including any action relating to the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity. (Section 87406.3(d)(2).)

- Any action involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

The following conduct is not prohibited because it does not involve an attempt to influence a decision:

- Formal participation in a panel or conference for educational purposes or to disseminate research.
- Attendance at general informational meetings, seminars, or similar events.
- Making requests for information about any matter of public record.
- Communications with the press. (Regulation 18746.2.)

Is the appearance before or communication made to your former agency employer?

An official subject to the local one-year ban may not appear before or communicate with any officer or employee of either of the following:

- The local agency, or any committee, subcommittee, or present member of the local agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. (Regulation 18746.3.)
- Any local agency that is subject to the direction and control of the agency that the official worked for or represented prior to permanently leaving the particular office or employment that subjected the official to the ban. This is known as the “pyramid concept.” If a former official’s local agency controls the budget, personnel, and other operations of another agency, the official is prohibited from appearing before or communicating with both agencies. (Regulation 18746.3.)

One-Year Ban for Air Pollution Control and Air Quality Management Districts (Section 87406.1)

The ***one-year ban for air pollution control and air quality management districts*** prohibits former district board members, officers, and certain employees from representing any other person by appearing before or communicating with, their former district in an attempt to influence any regulatory action for a one-year period. A former district employee is subject to this ban if the former employee made or financial effect on any financial interest. For purposes of Section 87406.1, “regulatory action” has been interpreted to include any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding before the district. (*Wood Advice Letter*, No. A-95-167.)

Former general managers and chief administrative officers of air pollution control and air quality management districts are subject to both Section 87406.1, the one-year ban for air pollution control and air quality management districts, and Section 87406.3, the one-year ban for local officials. Because the one-year ban of Section 87406.3 fully encompasses the one-year ban of 87406.1, a former general manager or chief administrative officer of an air pollution control or air quality management district who complies with Section 87406.3 and Regulation 18746.3 as detailed above has fully complied with Section 87406.1. Board members, officers, or employees of these districts, who are subject only to Section 87406.1, with questions relating to their obligations under this section should seek further Commission assistance.

Influencing Prospective Employment

The ***ban on influencing prospective employment*** prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement. (Section 87407; Regulation 18747.) In short, this law expands the Act’s conflict-of-interest rules and related disqualification obligations to situations where a decision will have a reasonably foreseeable material financial effect on the prospective employer even though the official does not yet have an economic interest in the employer.

Are you covered by this law?

The ban applies to *all* “public officials” including every member, officer, employee, or consultant of a local governmental agency. (Section 82048.)

What activities trigger this prohibition?

The ban is triggered by negotiating or having an arrangement regarding prospective employment. While submitting a résumé or an application to a prospective employer does not trigger the ban, the following contacts will trigger the ban:

- An interview with an employer or his or her agent.
- Discussing an offer of employment with an employer or his or her agent.
- Accepting an offer of employment.

Brenda, a city councilmember and engineer by trade, is interested in finding a more lucrative position in the private sector and submits her résumé to several large construction companies including Company X. Company X will be appearing before the city council for approval of its bid for work on a city project. May Brenda participate in the city council decision? Yes, Brenda has only submitted a résumé, which is not enough to disqualify Brenda from participating in the decision.

After receiving Brenda’s résumé but prior to the city council meeting, Company X calls Brenda to discuss job openings. Brenda is unsure whether she wants to work for this particular company so she schedules a lunch appointment with company managers to discuss the position. May Brenda participate in the city council decision? No, Brenda is interviewing with Company X and, therefore, negotiating prospective employment. Brenda may not participate in any governmental decision directly related to Company X.

When does a decision “directly relate” to a prospective employer?

Under the ban on influencing prospective employment, an official may not make, participate in making or influence decisions that “directly relate” to a prospective employer. A decision “directly relates” to a prospective employer if:

- The employer, either directly or by an agent, has initiated a proceeding in which a decision will be made by, claim, appeal, or similar request.
- The employer, either directly or by an agent, is a named party in, or is the subject of, the proceeding concerning the decision before the official or the official’s agency. A person is the subject of a proceeding if a decision involves the issuance, renewal, approval, denial, or revocation of any license, permit, or other entitlement to, or contract with, the subject person.
- The employer will be financially affected by the decision, as defined in the Commission’s conflict-of-interest regulations. (Regulations 18702.1 and 18702.3.) Officials should consult the conflict-of-interest regulations to determine the dollar threshold of the financial effect on the prospective employer that will trigger the official’s disqualification from a decision.

How do you determine the financial effect on the prospective employer?

An official must try to obtain information regarding the financial effect of a decision from the prospective employer. An official must make a good faith determination of the potential financial effect of the decision on the prospective employer.

Do any exceptions apply?

The ban on influencing prospective employment does not apply if:

- The prospective employer is a state, local, or federal governmental agency.
- The official is legally required to make or participate in the making of the governmental decision.
- The governmental decision will affect the prospective employer in substantially the same manner as it will affect a “significant segment” of the public generally.