



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 13, 2023

Ahmad Shah, PE
Sr Project Manager Engineering
HNTB CORPORATION
3633 Inland Empire Blvd, Suite 750
Ontario, CA 91764

Re: Your Request for Advice
Our File No. A-23-138

Dear Mr. Shah:

This letter responds to your request for advice regarding the post-government employment provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

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.

QUESTION

As a former Caltrans Project Engineer and Design Senior now employed by HNTB, a subcontractor on the High-Rail Design hired to design three Wildlife Crossings, are you prohibited under the one-year ban or the permanent ban from participating in meetings with Caltrans engineers who review the design for the Wildlife Crossing project, working as a design team member on the Wildlife Crossing project or acting as the Project Manager on this project?

CONCLUSION

You are not restricted under either ban from working as a design team member on the Wildlife Crossing project or acting as the Project Manager. Because you had no participation in

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 18104 through 18998 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.

Caltrans' HSR design contract with BRIGHTLINE or the Wildlife Crossing design project as a Caltrans employee or in your capacity as a supervisor, and the facts indicate that your work for HTNB will be on the implementation of an existing contract, you are not prohibited from participating in this contract under the permanent ban.

Under the one-year ban, you may meet with Caltrans engineers on the Wildlife Crossing design project, so long as the meetings are part of your services to administer, implement, or fulfill the requirements of the existing contract. However, during the one-year period, you may not meet with Caltrans engineers or other staff on behalf of your employer if the meeting relates to any amendment, revocation, or change in a contract with Caltrans or any new service or contract with Caltrans.

FACTS AS PRESENTED BY REQUESTER

The California Department of Transportation ("Caltrans") employed you as a Project Engineer and Design Senior from April 1993 to May 31, 2023. As a Design Senior, you supervised a Design Team (Design B) from March 2019 to May 2023.

After retirement, you were hired by HNTB, a private consulting firm. The company, BRIGHTLINE, hired HNTB to complete the design of the High-Speed Rail ("HSR") from Rancho Cucamonga to Las Vegas in Caltrans Right of Way (R/W) along I-15. You are a member of the design team for that project. While you worked for Caltrans, neither you nor Design B was a part of the team reviewing the design of HSR.

Caltrans is funding BRIGHTLINE to construct three Wildlife Crossings in the limit of the HSR project along I-15. BRIGHTLINE will pay HNTB to design the Wildlife Crossings for Caltrans. You wish to know if the post-government employment laws restrict your ability to assume the HNTB Project Manager position or work as a design team member on the Wildlife Crossing project and what restrictions exist regarding your ability to participate in meetings with Caltrans engineers who review the design for the Wildlife Crossing project.

In response to our request for additional information, you state that your duties, as both a Caltrans design engineer and supervisor, did not include participation in directing or designing the program's operation or agreements for either the HSR design or the Wildlife Crossing design project. You were not involved in supervising anyone regarding the Wildlife Crossing design services or in any action regarding the service contract, and you did not have contact with any participants. In response to our additional request as to whether you had any role as a Caltrans employee, in design, as an engineer, or as supervisor, in the HSR or Wildlife Crossing project, you state you were not involved in any capacity with the Wildlife Crossing or HSR project while working for Caltrans and you were not a part of any discussion, meetings, or decisions as an engineer or supervisor regarding the Wildlife Crossings project.

ANALYSIS

Public officials who leave state service are subject to the post-governmental employment provisions under the Act, which include the one-year ban (Section 87406) and the permanent ban. (Sections 87401, 87402).

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 the official’s 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 for one year after leaving office or employment. (Section 87406.)

This ban applies to an employee who held a designated position at a state agency, or one that should be designated in the agency’s conflict-of-interest code, due to the employee’s involvement in making or participation in the making of decisions that may foreseeably have a material effect on any financial interest. (Section 87302(a).)

For purposes of the ban, an “appearance or communication” includes conversing directly or by telephone, corresponding by writing or email, attending a meeting, and delivering or sending any communication. (Regulation 18746.2(a).) It 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.” (*Ibid.*)

The ban applies for twelve months from the date the employee “permanently leaves” state employment, which is defined as the date the official is no longer authorized to perform the duties of the office or employment and the official stops performing those duties, even if the official continues to receive compensation for accrued leave credits. (Regulations 18746.1(b)(1).) and 18746.4(a)(1).)

The one-year ban applies to you as a former Caltrans Project Engineer and Design Senior. Your date of permanent separation from state service is May 31, 2023, and the ban will apply until May 31, 2024. During this one year, you may not make a formal or informal appearance before Caltrans, your former agency, or any state agency whose “budget, personnel, and other operations are subject to the control” of your former agency as an HTNB employee to influence any administrative or legislative actions or any discretionary acts involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

However, the one-year ban does not prohibit all appearances or communications before your former agency. For example, appearances or communications unrelated to influencing, such as requests for a matter of public record or attending a general informational meeting, are not restricted under the one-year ban. (See Regulation 18746.2(b)(1)-(4).)

Also, unless prohibited under the permanent ban discussed below, during the one-year period, you may perform the following tasks so long as you are not identified in connection with your employer’s efforts to influence Caltrans: You may draft proposals on your employer’s behalf to be submitted to Caltrans (*Cook* Advice Letter, No. A-95-321; *Harrison* Advice Letter, No. A-92-289); and you may use your expertise to advise an employer on Caltrans procedural requirements, plans, or policies (*Perry* Advice Letter, No. A-94-004). Additionally, relevant to these facts, Regulation 18746.2(c) excludes from the one-year ban’s prohibitions your appearances or communications before Caltrans if they are made as part of services to administer, implement, or

fulfill the requirements of an existing grant or contract, provided the services do not involve the issuance, amendment, awarding, or revocation of the grant or contract proceedings. (Regulation 18746.1(c).) (Please note that the permanent ban may apply to such proceedings, as discussed below.)

Permanent Ban

The permanent ban prohibits a former state employee from switching sides and participating, for compensation, in a particular proceeding involving the State of California and other specific parties or assisting in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (Sections 87401, 87402.) 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 the official participated while a state employee.

Proceedings and Participation

A “proceeding,” in part, means any application, request for a ruling, contract, or other particular matter involving specific parties in any court or state agency (Section 87400(c)), while “participated” means to have taken part personally and substantially through decision, approval, disapproval or rendering advice (Section 87400(d)).

The facts state that neither you nor the team you supervised, Design B, was a part of the team reviewing or designing the HSR design project. As a Caltrans supervisor, you are “deemed to have participated” in any pending proceeding before Caltrans and under your supervisory authority. Regulation 18741.1(a)(4) specifies that a proceeding is under a supervisor’s “supervisory authority” in the following circumstances:

(A) The supervisor’s duties include the primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated or conducted. However, this provision does not apply to a supervisor who is only responsible for the general oversight of a program's administrative actions or functions in which the responsibilities concerning the specific or final review of the proceeding are expressly delegated to other persons in the agency.

(B) The supervisor directly supervises the person performing the investigation, review, or other action involved in the proceeding, including, but not limited to, assigning the matter for which the required conduct is taken.

(C) The supervisor reviews, discusses, or authorizes any action in the proceeding.

(D) The supervisor has contact with any of the participants in the proceeding regarding the subject of the proceeding.

You confirmed that you did not have any of the above involvement as a supervisor regarding the HSR proceeding, including the Wildlife Crossing design proceeding.

We note that the 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, subject matter, or factual issues from those considered in previous proceedings. (See, e.g., the *Rist* Advice Letter, No. A-04-187 and the *Goldberg* Advice Letter, No. I-05-225.) 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.) In addition, the application, drafting, and awarding of a contract, license, or approval is a proceeding separate from the monitoring and performance of the contract, license, or approval. (*Anderson, supra*; *Blonien* Advice Letter, No. A-89-463.)

Therefore, because the facts state that you had no participation in Caltrans’ HSR design, the contract with BRIGHTLINE, or the Wildlife Crossing design project as a Caltrans employee or in your capacity as a supervisor, and the facts indicate that your work for HTNB will be on the implementation of the existing contract, you are not prohibited from participating in this contract under the permanent ban. You are not restricted under either ban from working for HTNB as a design team member or Project Manager on the Wildlife Crossing project. Under the one-year ban, you may meet with Caltrans engineers on the Wildlife Crossing design project, so long as the meetings are part of your services to administer, implement, or fulfill the requirements of the existing contract. However, during the one-year period, you may not meet with Caltrans engineers or other staff on behalf of your employer if the meeting relates to any amendment, revocation, or change in this contract with Caltrans or any new service or contract agreement with Caltrans.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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