



# California Fair Political Practices Commission

June 20, 1990

Alec C. Stein  
Chief Counsel  
Department of Savings & Loan  
3460 Wilshire Boulevard, Third Floor  
Los Angeles, CA 90076-0832

Re: Your Request for Informal Assistance  
Our File No. I-90-357

Dear Mr. Stein:

Thank you for your request for advice on the applicability of Government Code Sections 87400-87405, the "revolving door" provisions of the Political Reform Act (the "Act").<sup>1</sup> Since your question is general in nature, we are treating your request as one for informal assistance as set forth in Regulation 18329 (copy enclosed).<sup>2</sup>

## QUESTION

Does the appointment of a former savings and loan commissioner to the position of conservator of a state licensed savings and loan association (the "association") violate any law or regulation administered by the Fair Political Practices Commission?

## CONCLUSION

The appointment of the former commissioner to the position of conservator in and of itself does not violate any provision of the Act, as long as the prospective conservator does not participate in any specific proceeding on behalf of the association in which proceeding he had participated during his term as commissioner.

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<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).)

FACTS

As chief counsel from the Department of Savings and Loan, you wish to know if a former commissioner of the department may be appointed as the conservator of a savings and loan association which has been placed in conservatorship by the department. The facts related by you in your letter and in a subsequent telephone call indicate that during the six month term of the conservatorship, the conservator would manage and conserve the assets of the association, and would be in charge of all of the association's business affairs, subject to certain restrictions by the current commissioner. Specifically, those restrictions would enjoin the conservator from engaging special counsel or other experts, incurring any expenses other than normal operating expenses, liquidating assets except in the ordinary course of operations, and removing any director, officer or employee of the savings and loan association without written approval from the current commissioner. The former commissioner left his position with the Department of Savings and Loan on April 30, 1990. As conservator, the former commissioner would receive compensation from the association whose affairs he would oversee.

ANALYSIS

The provisions of the Act which apply to former state administrative officers who subsequently work in the private sector are Sections 87400 through 87405. The basic prohibition is found in Section 87401, which provides as follows:

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.

The above restrictions are expanded in Section 87402, wherein former state officials are prohibited from assisting others in such proceedings as are outlined above. Section 87402 states the following:

No former state administrative official, after the termination of his or her employment or term of

office shall for compensation aid, advise, counsel, consult or assist in representing any other person (except the State of California) in any proceeding in which the official would be prohibited from appearing under Section 87401.

A state administrative official is defined by Section 87400(b) as the following:

"State administrative official" means every member, officer, employee or consultant of a state administrative agency who as part of his or her official responsibilities engages in any judicial, quasi-judicial or other proceeding in other than a purely clerical, secretarial or ministerial capacity.

The former commissioner falls within the definition of state administrative official. Therefore he may not participate in any proceeding in which the State of California is a party or in which the state has a direct and substantial interest if he participated in the same proceeding as a state administrative official.

"Proceeding" and "participated" are defined in Section 87400(c) and (d) as the following:

(c) "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, including but not limited to any proceeding governed by Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code.

(d) "Participated" means to have taken part personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee, but excluding approval, disapproval or rendering of legal advisory opinions to departmental or agency staff which do not involve a specific party or parties.

Please note that it is the specific proceeding, rather than the type of proceeding, that is the subject of the restriction. In other words, if the conservator had been involved in approving or disapproving a particular application while serving as commissioner, then he would be enjoined from participating in any proceeding involving that same application while acting as

conservator. (See Sanford Advice Letter, No. A-85-182, at page 3, copy enclosed.)

The above does not mean that "proceeding" is necessarily defined narrowly, however. For example, if the subject association had been under investigation during the former commissioner's term, then that investigation would be a proceeding for purposes of the Act. Further, the former commissioner would be deemed to have participated in that proceeding, even though his role might have been entirely supervisory. (See Blonien Advice Letter, A-89-034, copy enclosed.)

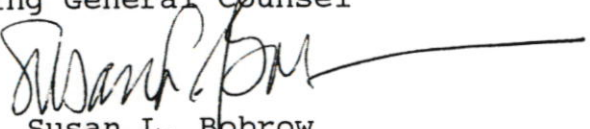
If such an investigation did occur, and if it resulted in a determination that there was a need for a conservatorship, then the conservatorship could be considered to be part of the same proceeding as the investigation. In that circumstance the former commissioner would be prohibited from becoming conservator.

Of course, if there had been no investigation or other proceeding during the former commissioner's term, which could be construed to be the "same proceeding" with respect to the association, then the former commissioner would not have violated any of the revolving door provisions of the Act, and he would be free to assume the conservatorship of the association.

This response to your inquiry is based on the limited facts presented to us. If you have further questions on this matter, particularly regarding the proposed conservator's prior participation in proceedings which presently affect the association release, do not hesitate to contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin  
Acting General Counsel

  
By: Susan L. Bobrow  
Counsel, Legal Division

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Enclosures