

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 2, 1996

Kathryn J. Tobias  
Chief Counsel  
California Integrated Waste Management Board  
8800 Cal Center Drive  
Sacramento, California 95826

Re: Your Request for Informal  
Assistance  
Our File No. I-96-089

Dear Ms. Tobias:

This is in response to your request for advice regarding the post-governmental employment provisions of the Political Reform Act (the "Act").<sup>1</sup> Since you have not identified the employee on whose behalf you are requesting advice, we treat your letter as a request for informal assistance pursuant to the provisions of Regulation 18329(c).<sup>2</sup>

QUESTIONS

1. May an ex-employee of the California Integrated Waste Management Board ("CIWMB") carry on a social conversation with CIWMB employees, on the telephone or in person at the CIWMB's offices?

2. May the ex-employee act as the "liaison" for an organization if this designation simply means that he or she will receive mailings and other information from the CIWMB?

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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, Sections 18000-18995.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

3. What if the ex-employee's liaison will be involved with discussions regarding CIWMB activities which may affect his or her organization? May the ex-employee act as the "program director" or "grant manager" for an organization where the "program" is being funded by a grant from the CIWMB?

4. What if the ex-employee in this capacity would have no direct communication with the CIWMB?

5. What if the ex-employee in this capacity would have to negotiate the terms and conditions of a contract for the grant?

6. What if the ex-employee in this capacity would have to submit requests for payment pursuant to the contract?

7. May the ex-employee submit a grant application on behalf of an organization which he or she signs on behalf of the organization?

8. What if he or she did not sign the grant application, but his or her name appears in various parts of the application?

9. What if the grant application, in providing information on how the organization is qualified for and capable of performing under the grant, provided the ex-employee's name and resume as proof of its qualifications?

10. May the ex-employee participate in a conversation with CIWMB staff or board members regarding CIWMB's activities?

11. What if the ex-employee simply sat in the room while such a conversation occurred, but did not actively participate in the conversation?

12. Would the answer differ if the meeting were an open Board meeting in a large room with numerous attendees as opposed to a meeting in a CIWMB staff or board member's private office?

13. Once a violation has occurred, is there anything the CIWMB can do to protect the integrity of its decisionmaking process which would protect it from a challenge pursuant to Government Code section 91003(b)?

14. For instance, would a memorandum to file, or letter to the ex-employee involved, specifying that the contact(s) in question would not be considered in the CIWMB's decisionmaking process prevent such a challenge?

15. If the "contact" involved written material in a grant application, would a memorandum to file specifying that the information in question would not be considered in the CIWMB's grant review process prevent such a challenge?

16. If CIWMB staff or board members suspect that a prohibited contact may occur, what actions can they take to prevent it?

17. For instance, if an ex-employee is about to participate in a meeting regarding board activities, can he or she be prevented from entering the room?

18. Can a letter from the ex-employee be sent back with a letter indicating that it has not been accepted and will not be considered in any decision to be made by the CIWMB?

19. Can a grant application that the ex-employee submits to the CIWMB be rejected from consideration?

20. Could the CIWMB be subject to the provisions of Government Code section 83116.5 for aiding and abetting a violation of the Political Reform Act, if it took no action to stop a suspected violation of Government Code section 87406?

#### CONCLUSION

The Act's revolving door provisions prohibit former employees from influencing legislative or administrative action of their former agency for compensation.

Any communication that is intended to influence administrative or legislative action is prohibited by Section 87406. On the other hand, social calls and contacts with agency employees for the purpose of obtaining general information are permitted.

We are unable to give you specific advice on how the board can protect its decisionmaking process from reversal based on former employees' violations of the Act; however, the CIWMB should educate its current employees concerning the revolving door provisions of the Act.

#### FACTS

From time to time, the California Integrated Waste Management Board ("CIWMB") has employees who leave state service and become employed in the private waste industry, as consultants or in some other capacity where they represent their employer in matters before the CIWMB. Typically, questions have arisen about the extent and nature of contacts that they may have with the CIWMB during their first 12 months after leaving.

ANALYSIS

Section 87406(d)(1) of the Act provides that no officer or designated employee of a state administrative agency:

" ... for a period of one year after leaving office or employment, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person, by making any formal or informal appearance, or by making any oral or written communication, before any state administrative agency, or officer or employee thereof, for which he or she worked or represented during the 12 months before leaving office or employment, 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."

Pursuant to Section 87406, for one year after a designated employee of the CIWMB leaves the Board, the employee may not, for compensation, act as representative or agent for any person before the Department for the purpose of influencing<sup>3</sup> administrative<sup>4</sup> or legislative<sup>5</sup> action or 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. (Section 87406.)

However, communications with an agency that are not for the purpose of influencing administrative or legislative action are

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<sup>3</sup> "Influencing legislative or administrative action" includes influencing by any means, including but not limited to the provision or use of information, statistics, studies or analyses. (Section 82032.)

<sup>4</sup> "Administrative action" is defined in Section 82002 as the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding.

<sup>5</sup> Section 82037 defines "legislative action" as the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his or her official capacity. "Legislative action" also means the action of the Governor in approving or vetoing any bill.

not restricted by Section 87406. For example, an ex-employee could attend informational meetings with the agency, or request information from the agency concerning existing laws, regulations, or policies, so long as the employee does not attempt to influence administrative or legislative action. (See Bagatelos Advice Letter, No. I-91-202; and Regulation 18202(a)(1).)

In addition, the Commission has advised that a former agency official may draft proposals on a client's behalf to be submitted to the agency so long as the former employee was not identified in connection with the client's efforts to influence administrative action. (Cook Advice Letter, No. A-95-321; Harrison Advice Letter, No. A-92-289.)<sup>6</sup> Similarly, the ex-employee may use his or her expertise to advise clients on the procedural requirements, plans, or policies of the employee's former agency so long as the employee is not identified with the employer's efforts to influence the agency. (Perry Advice Letter, No. A-94-004.)

Certain other informal contacts may not be considered influencing. For example, an ex-employee may request information concerning anything that is a matter of public record, such as existing laws, regulations or policies. (Harrison Advice Letter, supra.) Further, an ex-employee may attend informational meetings or public forums if the attendance is not for the purposes of influencing agency actions. (Craven Advice Letter, No. A-93-057.)

We now proceed to the specific issues addressed in your letter. Keep in mind that advice about the revolving door provisions is entirely dependent on the individual circumstances of any contact between an agency and the agency's former employee. Since you have asked several general questions about possible contacts with your agency, rather than specific questions involving particular employees, we must provide you with general guidance rather than specific advice. If you have questions about specific incidents, we encourage you or your former employees to seek formal written advice.

#### Ex-Employee Activities

An ex-employee may carry on a social conversation with CIWMB employees if the conversation is not intended to influence administrative or legislative action. The ex-employee may receive general information concerning anything that is a matter of public record, such as existing rules or regulations. (Bagatelos Advice Letter, supra.)

The ex-employee may act as the program director for an organization where the program is being funded by a grant from the

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<sup>6</sup> The inclusion of the ex-employee's name on the employer's normal letterhead will not constitute an appearance before or communication to the employee's former agency. (Perry Advice Letter, No. A-94-004.)

CIWMB, but may not have any oral or written communication with the CIWMB for the purpose of influencing administrative or legislative action on that program. Thus, the ex-employee may not act as a "liaison" for a specific program or grant if the ex-employee will act as the board's contact to receive program specific information. The ex-employee may not negotiate the terms and conditions of a contract for the grant or identify himself or herself on any requests for payment pursuant to a contract. (Cook Advice Letter, supra.)

Similarly, the ex-employee may not identify himself or herself on any grant application on behalf of an organization. This includes signing the grant application, providing the ex-employee's name and resume as proof of the organization's qualifications or otherwise placing the ex-employee's name anywhere on the grant application. (Cook Advice Letter, supra.)

The ex-employee may not participate in conversations or meetings with CIWMB staff or board members on specific grant applications if the conversations are for the purpose of influencing administrative or legislative action. (Craven Advice Letter, supra.) Whether a particular meeting or conversation is for the purpose of influencing legislative action will depend on the individual facts of the case. For instance, if the employee attends a public meeting with numerous other attendees where there are several topics discussed, it may be possible to infer that mere attendance is not for the purpose of influencing the agency's action. Conversely, where there is a small meeting to discuss a particular administrative or legislative action, it may be inferred that the ex-employee's mere presence at the meeting is intended to influence agency action. Therefore, whether the ex-employee may attend such a meeting depends greatly on the facts of that particular meeting and the ex-employee's intentions in attending the meeting. We are unable to give you advice on when such a contact might be prohibited absent additional facts.

#### CIWMB Actions

It is not within the scope of our advice function to issue advice on how to protect the CIWMB from a challenge pursuant to Government Code section 91003(b). Whether a CIWMB decision will be subject to such a challenge will depend on the facts in an individual case.

Further, we cannot say whether a memorandum to the file stating that improper contacts will not be considered in the decisionmaking process will prevent such a challenge. We encourage the CIWMB, however, to educate their employees on the requirements and prohibitions in Section 87406 and we have enclosed a copy of our revolving door information outline for you to distribute to your employees if you choose. Such education may prevent current CIWMB employees from engaging in improper contacts while still employed by the agency and assist them in complying with the Act when they leave state employment.

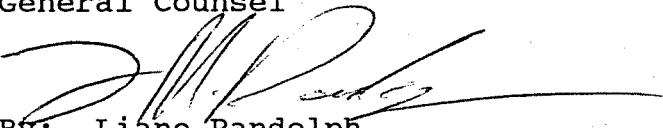
You ask what actions CIWMB employees can take to prevent prohibited contact, such as barring ex-employee's from CIWMB meetings and returning letters and grant applications that identify former employees. Such issues will depend on the internal procedures at CIWMB and we cannot give advice on those questions.

Finally, you ask whether the CIWMB could be subject to the provisions of Section 83116.5 for aiding and abetting a violation of the Act. Generally, mere participation in a decision would not constitute aiding and abetting under the Act. (Section 83116.5.)<sup>7</sup> However, such a question ultimately depends on the particular facts and circumstances of each case.

If you have any further questions, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Liane Randolph  
Counsel, Legal Division

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<sup>7</sup> Section 83116.5 provides that any person who purposely or negligently causes any other person to violate any provision of this title, or who aids and abets any other person in the violation of any provision of this title, shall be liable for administrative penalties under the Act.