



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

September 19, 2000

Les Weeks  
3680 Reflection Road  
Shingle Springs, CA 95682

**Re: Your Request for Informal Assistance  
Our File No. I-00-139**

Dear Mr. Weeks:

This letter is in response to your request for informal assistance<sup>1</sup> regarding the post-employment provisions of the Political Reform Act (the "Act").<sup>2</sup>

### QUESTIONS

1. After leaving state service, may you represent or advise a landowner on the sale of his property to the State if that landowner previously approached the Department of Parks and Recreation regarding this same matter while you were employed there?
2. If, after leaving state service, you are prohibited from representing or advising the landowner, would your future employer also be prohibited from representing or advising this landowner?
3. May you represent or advise federal agencies regarding their compliance with regulations which you reviewed and helped to formulate as an employee of the Department of Parks and Recreation?

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<sup>1</sup> Please note that only formal written advice confers immunity provided under Section 83114(b) and Regulation 18329(b)(7). Informal assistance does not provide immunity. (Regulation 18329(c)(3).)

<sup>2</sup> Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

## CONCLUSIONS

1. Permanent Ban: After termination of your employment with the State of California, you may not, for compensation, represent, aid, advise, counsel, consult, or assist in representing a client in any proceeding where the State of California is a party or has a direct and substantial interest, and where the proceeding is one in which you participated during your tenure. Therefore, since you participated in a proceeding regarding the sale of the landowner's property to the state, you may not, for compensation represent or advise the landowner after leaving state service regarding the same proceeding.

One-Year Ban: For a period of one year after leaving state service, you may not, for compensation, communicate with or appear before the Department of Parks and Recreation for the purpose of influencing administrative or legislative action or any of the actions identified in Section 87406(d)(1) (cited herein).

2. The Act's post-employment restrictions apply only to former state administrative officials. Nothing in the Act precludes your future employer from representing or advising the landowner provided that the post-employment restrictions will not be violated in any other way. In particular, you may not aid, advise, counsel, consult, or assist your employer in representing the landowner in any proceeding in which you participated as a state administrative official under the Permanent Ban.

3. Under the Act's One-Year Ban, you may not, for compensation, represent a federal agency before the Department of Parks and Recreation for a period of one year after leaving state service. However, you may advise a federal agency regarding regulations you helped to draft as long as you will not violate the Act's Permanent Ban.

## FACTS

Based on your correspondence and phone conversation with Commission staff counsel, you are employed with the California Department of Parks and Recreation ("DPR"). After leaving state service, you plan to work for a local environmental consulting firm. You are requesting general information regarding how you are limited by the Act in participating in certain work for your new employer.

In your current managerial job with DPR, your office has been approached by a landowner to purchase his ranch for future use as a state park. Your division itself does not decide to purchase such property. Instead, the matter must be determined by the California State Parks and Recreation Commission. However, staff of your division may, depending on the situation, collect data to be used in the decision process. In particular, staff might survey the property and conduct an evaluation which would address such issues as access problems, soil

stability, and potential threats to endangered species. Your division might make recommendations regarding a particular purchase, but this does not occur in every situation. The weight of any data or evaluations submitted by staff to the Commission varies and might be minimal. You state that the property offer from this particular landowner was submitted in an ad hoc manner and that you would not characterize it as an official proceeding.

### ANALYSIS

Public officials who leave state service are subject to two types of post-employment restrictions under the Act. The first is a permanent prohibition on advising or representing any person for compensation in any judicial or other proceeding in which the official participated while in state service. The second is a one-year ban on making any appearance before their former agency, for compensation, for the purpose of influencing any administrative, legislative or other specified actions.

#### 1. Permanent Ban on "Switching Sides"

Section 87401 provides:

"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." (Section 87401.)

Section 87402 provides:

"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." (Section 87402.)

Sections 87401 and 87402 prohibit former state administrative officials, who participated in a judicial, quasi-judicial or other proceeding while employed by a state administrative agency, from being paid to represent or assist in representing another person regarding that same proceeding. (*Grady* Advice Letter, No. I-99-034.)

A “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.” (Section 87400(b).) As a manager employed by DPR, you are a state administrative official for purposes of the Act’s post-employment restrictions.

“State administrative agency” means every state office, department, division, bureau, board, and commission, but does not include the Legislature, the courts or any agency in the judicial branch of government. (Section 87400(c).) DPR, a state department, is a state administrative agency according to this definition. Consequently, you may not, for compensation, represent, aid, advise, counsel, consult, or assist in representing a client, other than the State of California, in any DPR judicial, quasi-judicial or other proceeding if you previously participated in that proceeding as a state official.

A “Judicial, quasi-judicial or other proceeding” is:

“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.” (Section 87400(c).)

You have stated that the landowner approached your office regarding the sale of his land to the State and that it is normal for your division to, at times, survey and conduct evaluations relating to the suitability of property for future use as a state park. Although you stated that a survey or evaluation conducted for this landowner is ad hoc and that you would not characterize it as an official proceeding, we assume the fundamental purpose of a survey or evaluation is to collect and provide information or recommendations for agency review and consideration. Consequently, if a particular survey or evaluation is considered by the Parks and Recreation Commission in determining whether to purchase a particular parcel of property, the survey or evaluation conducted by your division at the request of the landowner of the property would constitute a “request for determination,” and, therefore, a “proceeding” under Section 87400(c).

The permanent ban will apply if you participated in that proceeding. Under the Act, a state official is considered to have "participated" in a proceeding if the official was personally and substantially involved in the proceeding. (Section 87400(d).) Additionally, a former state official who held a management position in a state administrative agency is deemed to have participated in a proceeding if the proceeding was pending before the agency during his or her tenure and if the decision regarding the proceeding was made by the official directly or by someone under his or her supervision. (Regulation 18741.1(a)(4).) As a result, since you were personally and substantially involved in a proceeding related to the landowner's property or managed another who participated in the proceeding, then you may not, for compensation, represent or advise the landowner on that proceeding after leaving state service.

You have additionally inquired as to whether the Permanent Ban prohibits you from representing or advising federal agencies regarding their compliance with regulations which you reviewed and helped to formulate. We have previously advised that the investigation of contamination and issuance of a cleanup order is a proceeding separate from the proceeding of compliance with the cleanup order. (*Witz* Advice Letter, No. A-88-382.) Therefore, it is apparent that compliance with a legal mandate, such as a federal agency's compliance with a DPR regulation, is a distinct proceeding. The Commission has also concluded that the application, drafting and awarding of a contract is a separate proceeding from the monitoring and performance of the contract. (*Blonien* Advice Letter, No. A-89-463; *Anderson* Advice Letter, No. A-98-159.) By analogizing to the separate proceedings of drafting and monitoring of a contract, we conclude that the drafting and formulation of a regulation is a proceeding separate from compliance with that regulation.

Please note that the permanent ban applies throughout the entire duration of a proceeding. It would not, however, prohibit you from representing a client in any *new* proceeding even though the client may have been a party to a previous proceeding in which you participated as a state official. Additionally, the permanent ban covers only the proceedings of state administrative agencies; therefore, it does not generally prohibit you from representing a client before a city, county, or federal agency. (Section 87400(a).)

## 2. One-Year Ban

In addition to the permanent ban, the Act specifically provides that no designated employee of a state administrative agency:

“[F]or 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.” (Section 87406(d)(1).)

For purposes of this paragraph, an “appearance” before a state administrative agency does not include an appearance in a court of law, before an administrative law judge, or before the Worker's Compensation Appeals Board. (*Ibid.*)

Pursuant to section 87406, you may not, for compensation and for a period of one year, appear before or otherwise represent any client, such as the landowner or a federal agency, before DPR for the purpose of influencing the actions specified in this statute since you are a former state administrative official of DPR. Although the permanent ban, as discussed above, does not prohibit you from representing a client in a new proceeding before your former state agency, you *are* prohibited from doing so for a period of one year under the one-year ban.

Under the one-year ban, your former agency includes any state administrative agency you worked for or represented during the 12-month period before you left state service. (*Ibid.*) Your former agency also includes any agency whose budget, personnel and other operations are subject to the direction and control of your former agency. (Regulation 18746.1(b)(6)(B).)

While the one-year prohibition places restrictions on your appearance before your former agency, it does not prohibit you from drafting proposals on a client's behalf to be submitted to these agencies. Similarly, it does not forbid you from using your expertise to advise clients on the procedural requirements, plans, or policies of your former agency. Please observe that, in either situation, you may not be identified in connection with your clients' efforts to influence your former agencies during the one-year period in any way. Moreover, the permanent ban, as discussed earlier, may limit such activities depending on the specific proceeding.

Both the Act's Permanent Ban and the One-Year Ban apply only to former state administrative officials. Therefore, nothing in the Act precludes your future employer from representing or advising the landowner provided that the post-employment restrictions will not be violated in any other way. However, under Section 87401, you may not aid, advise, counsel, consult, or assist your employer in any proceeding that triggered the Permanent Ban.


Additionally, Section 87407 of the Act provides that “no state administrative official shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating, or has any

arrangement concerning, prospective employment.”

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

Sincerely,

Luisa Menchaca  
Assistant General Counsel

  
By: Natalie Bocanegra  
Staff Counsel, Legal Division

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