



FAIR POLITICAL PRACTICES COMMISSION

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August 5, 2011

Sherry Mediati
19090 Soulsbyville Road
Sonora, California 95370

Re: Your Request for Informal Assistance
Our file No. I-11-109

Dear Ms. Mediati:

This letter responds to your request for advice regarding the revolving door provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your question is general in nature, we are treating your request as one for informal assistance.² Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other post-governmental employment laws such as Public Contract Code Section 10411.

QUESTION

May you perform the following work for private-sector companies that do business with the State after leaving your state position?

- Document procedures the companies have put in place with one or two-day site visits to each project to determine if they are in compliance with State and Federal law.
- Write individual agreement review funding letters to project recipients through the private sector companies.

Projects monitored for cities and counties could possibly have your name on the agreements between them and the California Energy Commission.

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 18110 through 18997 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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114, Regulation 18329(c)(3), copy enclosed.)

FACTS

You were employed by the California Energy Commission as a Staff Services Manager I, Grants and Loans Manager. Your last day of work was June 2, 2011, and your final retirement date from State service will be July 9, 2011. To your knowledge your position was not designated in your agency's conflict-of interest code, and you did not file a statement of economic interests. Your duties primarily consisted of putting in place processes and procedures for drawing up agreements for grants and loans and editing agreements. The office you worked in participated in the posting of grant and loan solicitation proposals for the agency, but you did not participate in the evaluation or agreement negotiations of the applications for grants or loans. You were granted a "Delegation of Approval Authority" from the Executive Director of the California Energy Commission that allowed you to sign and approve contracts, grants, loans and revenue bonds documents, and you did sign some contracts in your manager's absence. During our telephone conversation you stated that though you checked contracts to make sure they included all required elements, you made no policy decisions related to the content of any contracts that you signed. The duty statement that you have provided states that you acted as the principal advisor to the California Energy Commission and developed policies and procedures related to grants, loans and revenue bond activities for Commission programs as well as for programs of other state agencies for which the Commission is administratively responsible.

CONCLUSIONS AND ANALYSIS

Public officials who leave state service are subject to two types of post-governmental employment provisions under the Act, colloquially known as the "revolving door" prohibitions.³

The one-year ban applies to any employee of a state administrative agency who holds a position that is designated or should be designated in the agency's conflict-of-interest code. (Section 87406(d) (1); Regulation 18746.1 (a) (2).) A governmental employee should be designated in his or her agency's conflict-of-interest code if the employee makes or participates in making governmental decisions that could have a reasonably foreseeable material effect on any financial interest. (Section 87302.)

From the facts you have provided your position was one that should have been designated in your agency's conflict-of-interest code because you were able to approve contracts, you acted as a principal advisor to the California Energy Commission, and you developed policies and procedures related to grants, loans and revenue bond activities for Commission programs. These activities are activities that could have a reasonably foreseeable material financial effect upon your financial interests; therefore the one-year ban applies to you. Because you stopped working for the agency on June 2, 2011, the one-year ban would begin from that date.

³ In addition, Section 87407 prohibits certain state and local officials from making, participating in making, or using their official position to influence decisions affecting persons with whom they are negotiating employment, or have any arrangement concerning employment. (Also see Regulation 18747.) This no longer applies to you because you have already left state service so it will not be discussed in this letter.

Under the one-year ban you may not be compensated to work for a new employer and make an appearance before your former state employer. An appearance would include your name appearing on an agreement with the California Energy Commission. (*Harris* Advice Letter, No. A-10-183.)

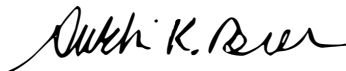
The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which a person participated while he or she served as a state administrative official. A state administrative official is defined as every member, officer, employee or consultant of a state administrative 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).) “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 . . .” (Section 87400(c).)

From the facts that you have provided, you were a state administrative official who engaged in judicial, quasi-judicial or other proceedings implicated by the permanent ban. Because the permanent ban applies to you, you must refrain from working on projects in the private sector that involve items you worked on as a state administrative official as described further in the enclosed fact sheet.

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

Sincerely,

Zackery P. Morazzini
General Counsel



By: Sukhi K. Brar
Counsel, Legal Division

SKB:jgl

Enclosure