



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

November 1, 2024

Christian Bisher
Air Quality Specialist
Central California Environmental Justice Network
(CCEJN)
1907 N Gateway Blvd, Suite 103
Fresno, CA 93710

Re: Your Request for Informal Assistance
Our File No. I-24-114

Dear Mr. Bisher:

This letter responds to your request for advice regarding the “revolving door” provisions of the Political Reform Act (the “Act”).¹ Because you have not provided any facts related to a specific appearance before or communication to your former agency, we are treating your request as one for informal assistance.²

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

Does the Act’s “one-year ban” apply to you, a former Air Quality Engineer I at the San Joaquin Valley Air Pollution Control District, with respect to communications made to your former agency while acting on behalf of your new employer, the Central California Environmental Justice Network?

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.

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

CONCLUSION

Yes, as a former designated employee, the Act's one-year ban applies to you under Section 87406.1. As such, you are prohibited from appearing before or otherwise communicating with your former agency for the purpose of influencing a regulatory action until January 30, 2025—one year after your last day working for your former agency. The extent of this prohibition is discussed further below.

FACTS AS PRESENTED BY REQUESTER

You were employed as an Air Quality Engineer with the San Joaquin Valley Air Pollution Control District (the "District") from February 18, 2020 to January 30, 2024. You confirmed by email on October 18 that this is a designated position in the District's Conflict of Interest Code. You were a designated employee, and you filed an annual Form 700 Statement of Economic Interests during your employment with the District.

You currently are employed as an Air Quality Specialist with the Central California Environmental Justice Network (CCEJN) based out of the San Joaquin Valley. CCEJN is a 501(c)(3) nonprofit that strives to empower communities and secure children's futures by eliminating negative environmental impacts in low income and communities of color in the Central Valley.

You help CCEJN understand District rules and advise on any District permit conditions that could apply to complaints submitted by residents on air pollution emitters in the Valley. CCEJN then chooses what course of action they will take, and they communicate with the District. CCEJN intends to never reference your name in any communication with the District.

You have inquired regarding the permissibility of communication or interaction with your former agency in numerous contexts, including:

- Pulling public records from the District and helping CCEJN learn about specific entities with District permits, how they operate, and what their permits are actually saying and limiting;
- Participating in meetings or calls between CCEJN and the District to ask technical or permit-related questions or provide guidance/knowledge of the same to your co-workers;
- Appearing before or communicating with the District as a member of the general public regarding Valley air quality and your own health and that of your family;
- Opposing permitting actions you believe were not being issued in accordance with applicable rules and regulations;
- Influencing or modifying rulemaking or air quality plans when you believe they were not as stringent as rules and regulations required given the jurisdiction's National Ambient Air Quality Standards nonattainment status;
- Asking neutral questions that are technical in nature to get a clearer or more detailed answer from the District;

- Asking similar questions or making similar comments, neutral and technical in nature, regarding District rule amendments and District State Implementation Plan (SIP) documents released to the public for comment; and
- Communicating with the District regarding why you believe the District did not comply with existing rules and regulations in the context of the issuance of a specific permit.

You receive a paycheck every two weeks based on a set annual salary. If you were allowed to communicate with the District, your salary would not increase and you would not get any sort of additional bonus. Whether you communicate with the District or not, your paychecks would stay the same. As additional background, CCEJN hired you and agreed on your compensation amount knowing you potentially could not communicate with the District. You indicate that you do not have any personal real property or business entity interest you would contact the District regarding.

ANALYSIS

The Act contains a “one-year ban” statute specifically addressing certain former employees of air pollution control districts. (Section 87406.1.) Section 87406.1 provides:

No former member of a district board, and no former officer or employee of a district who held a position which entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, shall, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that district board, or any committee, subcommittee, or present member of that district board, or any officer or employee of the district, if the appearance or communication is made for the purpose of influencing regulatory action.

(Section 87406.1(b).) Thus, whether the statute applies to you depends on whether you held a position that entailed the making, or participation in the making, of decisions that may foreseeably have a material effect on any financial interest.

Section 87300 of the Act requires every agency to “adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article.” Section 87302 requires that every Conflict of Interest Code specifically enumerate the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. These persons are “designated employees.” (Section 82019(c).) Accordingly, Section 87406.1 applies to both officers and employees designated in the District’s Conflict of Interest Code. It also applies to those that should be designated in the District’s Code. As a former Air Quality Engineer—that is, a former designated employee—you are subject to the one-year ban under Section 87406.1.

As a former employee subject to Section 87406.1, you are prohibited from making an appearance before or a communication with the District for the purpose of influencing regulatory action for one year. As you indicate your final date of service was January 30, 2024, the one year ban will apply to you until January 30, 2025.

Regulation 18746.2, which interprets Section 87406.1, states that a formal or informal appearance or oral or written communication 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. An “appearance or communication” includes, but is not limited to, conversing by telephone or in person, corresponding with in writing or by electronic transmission, attending a meeting, and delivering or sending any communication.³ The regulation specifies that an appearance or communication is permissible in the following limited situations when an individual:

- (1) Participates as a panelist or formal speaker at a conference or similar public event for educational purposes or to disseminate research and the subject matter does not pertain to a specific action or proceeding;
- (2) Attends a general informational meeting, seminar, or similar event;
- (3) Requests information concerning any matter of public record; or
- (4) Communicates with the press.

Under Section 87406.1, what constitutes a “regulatory action” is not defined. However, we have previously determined that “regulatory action” should be interpreted broadly to include every rule, regulation, or other action in any rate-making proceeding or quasi-legislative proceeding before an air pollution control district or an air quality control district. (*Wood* Advice Letters, Nos. I-95-167 and I-95-232; *Redmond* Advice Letter, No. I-12-162.)) Influencing proceedings of the former employer, other than a “regulatory action,” is not prohibited under Section 87406.1.

As applied to your facts, the one year ban would not prohibit you from appearances before or communications with District staff so long as it regards a permitting or enforcement matter involving specific parties. In contrast, the one-year ban prohibits you from making appearances or communicating to influence or modify any rulemaking or air quality plan proceedings. As a result, you are permitted to engage in discussions with the District and CCEJN to ask permit-related questions or oppose permitting actions if the communication relates to a permit or enforcement matter involving a specific party. You would not be permitted to ask these type of questions, including technical or “clarification” questions, in a rulemaking proceeding. For example, you would be prohibited from communicating regarding District rule amendments and District State Implementation Plan (SIP) documents released to the public for comment. Under the limited appearances and communications permitted during the one-year ban detailed in Regulation 18746.2, you are permitted to “pull public records” from the District, as this is a request for information concerning a public record.

We caution that the Act is intended to be liberally construed to accomplish its purposes. (Section 81003.) Consequently, we reiterate that you are prohibited from making any communications that relate in any manner to an attempt to influence a regulatory proceeding on behalf of your employer during your one-year ban. If you have questions regarding a specific

³ Your request included a number of questions regarding Regulation 18746.1; however, this regulation is only applicable to Section 87406, the state one-year ban for all state employees. You are subject to the more particular Section 87406.1 one year ban applicable to air pollution control district employees, and Regulation 18746. 2.

communication you would like to make to your former agency, and whether it would be permissible under the one-year ban, you may contact us for additional advice.

We also note that you have asked about communications on behalf of yourself and family. Without the identification of the specific proceeding and communication you wish to make, we can only conservatively advise that as a paid employee of CCEJN an appearance before the District will typically be considered a paid appearance in representation of your employer. To the extent you can identify a specific proceeding in which you would like to publicly comment outside of your employment, you should seek further advice identifying the proceeding and proposed comments prior to appearing before or communicating with the District.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

KC:aja