



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

December 23, 2024

Angela Hall, P.E.  
Engineer, Water Resources  
Pearblossom Project Headquarters  
34534 116th Street East  
P.O. Box 1250  
Pearblossom, CA 93553

Re: Your Request for Informal Assistance  
**Our File No. I-24-127**

Dear Ms. Hall:

This letter responds to your request for advice regarding the “revolving door” provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because your request for advice is general in nature, we are treating it as a request for informal assistance.<sup>2</sup>

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

Will the Act’s “one-year ban” and “permanent ban” apply to you, a Water Resource Engineer working for the Department of Water Resources, given that your position is not designated in the agency’s conflict of interest code?

### CONCLUSION

The Act’s one-year ban applies to employees designated in an agency’s conflict of interest code as well as employees who *should be* designated based on their making governmental decisions

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<sup>1</sup> 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.

<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).)

or participating in making governmental decisions that may foreseeably have a material financial effect on any financial interest. Based on your description of your work and the fact that it does not entail making governmental decisions, and any participation in the making of decisions is subject to significant intervening substantive review, your position is correctly excluded from your agency's conflict of interest code. Therefore, the one-year ban does not apply to you.

Nonetheless, the permanent ban may still prohibit you from participating in, or even assisting any other person in, certain proceedings involving specific parties you participated in as a state employee. This would include any existing DWR construction contracts for which you have previously provided administrative services or inspections of the contractor's performance. However, you have not provided any facts or made any inquiries regarding any specific proceeding including contracts you participated in as a state employee. Without the identification of a specific proceeding or contract in which you previously participated, we are unable to determine if the permanent ban would prohibit you from participating in, or assisting any other person in, the proceeding as a consultant. If you have any questions regarding a specific proceeding and the application of the permanent ban, you should reach out for additional advice.

### **FACTS AS PRESENTED BY REQUESTER**

You are currently a Water Resource Engineer for the Department of Water Resources ("DWR") in the Division of Engineering's Construction Branch. Your main duties include construction administration and inspection of current projects. You plan to retire from state service in March of 2025. You have had conversations with your supervisor about possibly returning to work for DWR to assist with construction administration as a consultant working for an employer that has contracted with DWR. In your current position, you do not have the authority to choose the contractors or consultants that DWR uses.

You included a copy of your Form 525, which contains additional details on your duties. The Form 525 describes your position as follows:

#### **POSITION SUMMARY**

Under direction of the Senior Engineer, Water Resources, performs a variety of field and office engineering assignments in connection with engineering design, drafting and inspection to ensure that construction contracts managed by Pearblossom Project Headquarters (PBPH) for the State Water Project and other assigned facilities are completed on schedule and per specifications.

#### **ESSENTIAL FUNCTIONS**

This position requires that the incumbent work cooperatively with others and maintain consistent, regular, and predictable attendance. The specific essential duties are:

40%: Perform engineering tasks both at the Project Headquarters or field construction office such as: Inspect construction work and ensure compliance with provided plans, specification, accepted submittals, applicable laws and ordinances; monitor and review quality control tasks and ensure compliance with specified standards[;] prepare

daily inspection reports and assists in the preparation of as-built and other drawings required; evaluate inspection reports and provide recommendations to consultants and Field Engineer for conformance with DWR/DOE Procedure Manual for Construction. Utilizing Microsoft Project and/or Primavera Project Planner software prepares construction schedules; fortify the various projects through the PBPH OP-2 which administers safe clearance.

20%: Perform engineering tasks both at the Project Headquarters or field construction office such as: Review designs, plans, specifications, estimates as well as review incoming contractor's correspondence to prepare appropriate responses; prepare contract change orders and memoranda directing contractor's work progress; prepare construction schedules and state estimates.

20%: Review preliminary plans and specifications of upcoming construction contracts and assists in the finalization of As-Built drawings. Assist with construction surveys, computations, tabulating and checking of construction survey notes. Field inspections may require travel to facilities via air travel or other means of transportation, may involve driving a pick-up truck or other vehicle off road on rugged or uneven terrain to and from job sites performing inspections of slopes, embankments, tunnels, pipes, and other enclosed areas.

20%: Reviews manufacturer and contractor submittals and methods of fabrication and installation to confirm compliance with contractual requirements and accepted principles, practices, procedures and methods of engineering. Inspect the work for completeness and conformance with the plans, specification, and applicable codes.

#### OTHER RESPONSIBILITIES

This position provides necessary support to the Divisions of Flood Management, Safety of Dams, Operations and Maintenance, Engineering, and/or the Public Affairs Office during governor declared emergencies, flood, dam, SWP, and other incidents and emergencies. Additionally, this position may participate in emergency operations in the capacity of area teams, field inspection, coordination, and assist agencies such as CalOES and FEMA in disaster work, including performing fieldwork to complete damage survey reports for droughts, flooding, earthquakes, and other emergencies. This position may also serve in one of the sections as established in the Incident Command System to assist the Department in performing its emergency preparedness, response, recover, and mitigation functions. These functions are established in the California State Emergency Plan and the Department's Administrative Orders.

You also confirmed that your position is not included in DWR's conflict of interest code, such that you are not required to file annual statements of economic interests (i.e., Form 700s).

In follow-up emails, you clarified that in your position, you inspect work performed by contractors to ensure they comply with plans and specifications. You draft letters, memorandum directives, change orders and construction estimates for review by your supervisor. Your work is independently checked and/or verified by work performed in the field. You explained that if you

work on construction estimates or daily extra work tickets (Time & Material), the calculations and information you input are checked by a co-worker and then sent to your supervisor for review and approval/processing. If the work is not based on calculations, it is because the item was installed on the project, witnessed by you, and verified by photos, inspection reports, and delivery tickets and invoices.

You further clarified that there are two main components to your work. First, when you are onsite inspecting work, you do not make recommendations. You strictly inspect the work to ensure that it meets contract specifications. You then record your inspection notes in a Daily Inspection Report. Second, when you are in the office, you collect and input data. The data is then sent to your supervisor for them to review and send to your Headquarters Manager. The Headquarters Manager has been given delegated authority to make recommendations to the Construction Branch Manager. You do not have any delegated authority to make recommendations or decisions. An example of this would be when a contractor performs work on a Time & Material basis. Daily Extra Work Tickets are filled out in the field based on the hours worked and signed by the Inspector to verify the hours, people-power, equipment and materials are all accurate. Those forms are sent to the office and they are input into an Excel sheet to obtain a total cost. The labor wages are based on prevailing wage, the equipment rate is based on Caltrans rates, and materials are based on actual invoices. This is all done in accordance with your contract specifications. Once all the information is input, the Excel workbook is sent to a co-worker to check for accuracy, then sent to your supervisor for review and further processing.

## ANALYSIS

Under the Act, public officials who leave state service are subject to two types of post-governmental employment provisions known as the “one-year ban” and the “permanent ban.” Colloquially, these provisions are known as the “revolving door” prohibitions.

### *One-Year Ban*

The one-year ban prohibits a former state employee from making, for compensation, any formal or informal appearance or making any oral or written communication before the employee’s former agency for the purpose of influencing any administrative or legislative action or any discretionary act 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); Regulation 18746.1.) The ban applies for 12 months from the date the employee permanently leaves state office or employment.

A former official is subject to the one-year ban if they are designated in their agency’s conflict of interest code or if the official *should be* designated in their agency’s conflict of interest code because the official makes or participates in making governmental decisions that may foreseeably have a material effect on any financial interest. (Sections 87302(a), 87406(d)(1); Regulation 18746.1(a)(4).) A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official’s agency to any course of action, or enters into any contractual agreement on behalf of the official’s agency. (Regulation 18704(a).) A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision

without significant intervening substantive review. (Regulation 18704(b).) However, making, participating in making, or influencing a governmental decision does not include actions by a public official that are solely ministerial, secretarial, or clerical. (Regulation 18704(d)(1).)

We have advised that an employee participates in the making of a governmental decision, even if it is reviewed by several superiors, where the supervisor relies on the expertise or recommendations of the employee in making their decisions. (See, e.g., *Rooklidge* Advice Letter, No. A-18-224.) “Significant intervening substantive review” has been interpreted to require more than the mere review of an official’s recommendations by superiors, but rather the independent checking of the official’s results without solely relying on the data of the official. (See, e.g., *Jacobs* Advice Letter, No. A-16-050.)

Additionally, In past advice letters, we have discussed “purely technical” actions by employees and consultants and how this type of work may fall into the exception for ministerial actions, even when those actions require considerable expertise and professional skill, if there is no discretion as to the outcome. In the *Kaplan* Advice Letter, No. A-82-108, we noted the exception does not apply where analyses or recommendations based on professional judgement are involved, writing:

However, this exception would not apply to technical tasks, such as most data gathering or analysis, in which the consultant makes professional judgments which can affect the ultimate decision in question. For example, if there are several “right” answers to a question, and a consultant not only does an analysis and calculation, but also decides or advises as to which is the “best” right answer, his task is no longer ministerial. If the choice of which “right” answer to use will influence the governmental decision, the consultant is participating in the decision.

(*Kaplan* Advice Letter, No. A-82-108.)

In *Rooklidge* Advice Letter, No. A-18-143, we considered whether a former public official who held the position of “Water Resource Control Engineer D” at the Water Resources Control Board, a position that was not included in the agency’s conflict of interest code. Based on the provisions of the Act discussed above, in combination with the requestor’s description of their job duties, we advised:

Here, your position involved more than the gathering or calculation of data; it involved the analysis and recommendation of actions in response to the data. Your superiors relied on your reports, analyses and professional judgements. As such, you participated in these decisions. These decisions involved notices of violation or required corrective actions which, by their nature, had a foreseeable and material financial effect on the water facilities. You noted that findings of corrective actions had an additional financial effect on the water facilities, as the findings were sometimes used to justify their grant requests.

The fact that your supervisor, a Senior Engineer, and his supervisor, a Principal Engineer, were the signatories on these letters does not alter your participation. We have advised that an employee participates in the making of a governmental decision,

even if it is reviewed by several superiors, where the supervisor relies on the expertise or recommendation of the employee in making their decisions. (*Lilyquist* Advice Letter, No. M-96-318 [Memorandum to the Attorney General] and *Gold* Advice Letter, No. A-93-059.) A showing of “significant intervening substantive review” of a recommendation is a narrowly applied exception and requires facts specific to a particular decision. Your facts indicate that, as a general matter, while your findings and recommendations were reviewed and discussed, your judgement was followed by your supervisors. Therefore, your position at the State Water Board, DDW, is subject to the one-year ban and the permanent ban, discussed below.

(*Rooklidge* Advice Letter, No. A-18-143.)

Here, your description of your work stands in contrast to the type of job duties considered in *Rooklidge*. You have indicated that your job, including both your field work and office work, involves collecting, inputting, and calculating data based on objective criteria and you do not make, nor are you authorized to make, recommendations based on that data. Further, the data you input is verified by a coworker before it is sent to your supervisor, who further reviews your work. The data is then sent to the Headquarters Manager, who further reviews the material and is authorized to make a recommendation to the Construction Branch Manager. This appears to be consistent with the job duties listed in your Form 525, which do not seem to reference any type of subjective analysis or recommendations. Based on the facts provided, some of your work may be “ministerial,” but we do not have sufficient facts to determine that your work is *solely* ministerial, as the exception requires. Nonetheless, there is no indication that your position entails making governmental decisions, and your participation in the making of any governmental decision is subject to significant intervening substantive review. Therefore, your position is properly excluded from DWR’s conflict of interest code and, consequently, the one-year ban would not apply to you if you were to contact DWR on behalf of a private employer after leaving state service.

#### *Permanent Ban*

The permanent ban applies to every “state administrative official,” which 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).)

The permanent ban prohibits a former state employee from “switching sides” and participating, for compensation, in certain proceedings involving a specific party or parties and the State of California or assisting others in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (Sections 87401 and 87402; Regulation 18741.1.) The permanent ban applies when an official has permanently left or takes a leave of absence from any office or employment. (Regulation 18741.1(a)(1).)

The permanent ban is a lifetime ban and applies to any formal or informal appearance or any oral or written communication, or aiding, advising, counseling, consulting, or assisting in representing any other person, other than the State of California, in an appearance or communication, made with the intent to influence any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official. ““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).)

An official is considered to have "participated" in a proceeding if the official took part in the proceeding "personally, and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation, or use of confidential information . . ." (Section 87400(d).) A former state official who held a management position in a state administrative agency is deemed to have participated in a proceeding if: (1) the proceeding was pending before the agency during the official's tenure, and (2) the proceeding was under the official's supervisory authority. (Section 87400(d); regulation 18741.1(a)(4).)

"The permanent ban does not apply to a 'new' proceeding even in cases where the new proceeding is related to or grows out of a prior proceeding in which the official had participated. A 'new' proceeding not subject to the permanent ban typically involves different parties, a different subject matter, or different factual issues from those considered in previous proceedings." (*Rist* Advice Letter, No. A-04-187; see also *Donovan* Advice Letter, No. I-03-119.) New contracts with the employee's former agency in which the former employee did not participate are considered new proceedings. (*Leslie* Advice Letter, No. I-89-649.) A new contract is one that is based on new consideration and new terms, even if it involves the same parties. (*Ferber* Advice Letter, No. I-99-104; *Anderson* Advice Letter, No. A-98-159.) In addition, the application, drafting, and awarding of a contract, license, or approval is a proceeding separate from the monitoring and performance of the contract, license, or approval. (*Anderson, supra*; *Blonien* Advice Letter, No. A-89-463.)

You did not hold a management position with DWR, so any proceeding in which the permanent ban would apply would be based on your personal participation in a proceeding. You have indicated that your work does not involve making decisions, approvals, disapprovals, formal written recommendations, or rendering advice on a substantial basis in proceedings. Also, based on the facts provided, it does not appear your work involves investigation or the use of confidential information. As such, it appears unlikely the permanent ban would prohibit you from working on a particular proceeding for your new employer. However, you have not provided any facts regarding your participation in any specific proceeding. As such, at this time, we merely generally advise you to be aware of the permanent ban's general prohibition on participating in proceedings on behalf of your new employer when you have already participated in the proceeding as a DWR employee, and to review your work history as necessary. For example, if a company applied for a permit from DWR and you, in your capacity as a DWR Water Resource Engineer, provided analysis and recommendations regarding whether DWR should approve the application, you would be prohibited from advocating for DWR's approval of the application in your subsequent capacity as an employee of the company. You would not, however, be prohibited from working for the company or contacting DWR regarding matters unrelated to that proceeding. If you have questions regarding a particular proceeding or your ability to participate in a proceeding after leaving state service, you should contact us for additional advice.

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