



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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August 3, 2022

Danielle Borrelli  
Operations Coordinator  
California Cybersecurity Institute  
Cal Poly SLO  
4615 San Ardo Ave  
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Re: Your Request for Advice  
**Our File No. A-22-075**

Dear Ms. Borrelli:

This letter responds to your request for advice regarding the post-governmental employment (“revolving door”) provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note we offer no opinion on the application of laws other than the Political Reform Act, such as the post-employment provisions of Public Contract Code Section 10411.

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, please contact us for additional advice.

### QUESTION

Do the Act’s “revolving door” provisions prohibit you, as a current Operations Coordinator for the California Cybersecurity Institute (CCI) at the California Polytechnic State University, San Luis Obispo (“Cal Poly”) from accepting a Project Manager position with Amazon Web Services (AWS)?

### CONCLUSION

The Act’s revolving door provisions do not prohibit you from accepting a position with AWS. However, while still employed with Cal Poly, we caution that the ban on influencing prospective employment prohibits you from making, participating in making, or influencing a governmental decision that directly relates to AWS while negotiating, or after reaching an employment arrangement with AWS. Upon leaving state service, the Act’s “permanent ban” on “switching sides” will prohibit you from being paid by AWS to work on any particular matters involving a specific party or parties that you previously participated in while employed by Cal Poly. However, the “one-year” ban will not apply to your proposed employment with AWS because your 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.

position at Cal Poly is not designated in Cal Poly's conflict of interest code, nor do the facts provided indicate that the position should be designated in the code.

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

You are currently employed as an Operations Coordinator with the California Cybersecurity Institute (CCI) at California Polytechnic State University, San Luis Obispo (Cal Poly), a part of the California State University (CSU) system. Your position is not designated in Cal Poly's conflict of interest code. After ten years of working for Cal Poly, you are now considering a position as a Project Manager with Amazon Web Services (AWS).

In your current role as Operations Coordinator, you have collaborated on projects with Cal Poly's Digital Transformation Hub (DxHub), which is part of AWS' network of Cloud Innovations Centers (CIC). The CIC program "provides an opportunity for nonprofits, education institutions, and government agencies to collaborate with other public sector organizations on their most pressing challenges, test new ideas with Amazon's innovation process, and access the technology expertise of Amazon Web Services (AWS)." Your involvement with DxHub has included assisting with hiring student assistants and part-time staff to help on Cal Poly's DxHub challenges, attending client meetings, and leading challenge development and execution for a non-profit. You note that your involvement in the challenge for the nonprofit client was as an intern and not staff member of Cal Poly.

In addition to being a member of AWS's CIC network, Cal Poly CCI is also a registered Amazon Training Partner (ATP). ATPs can resell AWS courses to paying customers and distribute certifications. In your current role, you have provided information about AWS classes to interested parties and helped organize class offerings and schedules for clients. However, you are not, and never have been, involved in Cal Poly's negotiations to become an ATP. In addition to being an ATP, Cal Poly currently has a contract with AWS for cloud technologies that support campus technical infrastructure. Your current responsibilities include researching viable technical solutions to improve business operations and communication of relevant content. To this end, you have assisted with the research, identification, justification, and recommendation of particular vendors that lead to contract development. However, you are not, nor were you ever, involved in decisions concerning Cal Poly's contract with AWS for cloud technologies.

While the AWS Project Manager role for which you are now being considered would not deal with any contract negotiations between Cal Poly and AWS, you would be responsible for planning, managing, and helping to maximize the impact of CIC challenges, on which you worked as an employee of Cal Poly. You are now seeking advice on whether working as a Project Manager for AWS would conflict with any post-employment restrictions under the Act, given your current and past work for Cal Poly.

## ANALYSIS

Public officials who leave state service<sup>2</sup> are subject to two types of post-governmental employment provisions under the Act: the “one-year ban” and the “permanent ban.” These provisions are commonly referred to as the “revolving door” prohibitions. A third restriction, the ban on influencing prospective employment, prohibits current state officials from taking part in decisions that directly relate to a prospective employer. These three prohibitions are discussed in turn below as they apply to your facts.

### Influencing Prospective Employment

The ban on influencing prospective employment prohibits any public official from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer while negotiating or after reaching an employment arrangement. (Section 87407; Regulation 18747.) While a public official may negotiate and accept an offer of future employment before leaving their current state position, Section 87407 is designed to ensure that the official does not use their state position to make any decisions that unduly benefit the organization that is hiring the official. The ban on influencing prospective employment applies to all “public officials,” under the Act, including employees of state agencies. (Section 82048).

You are an employee of Cal Poly, a state agency, therefore the ban applies to you and prohibits you from making, participating in making, or influencing a decision by Cal Poly that directly relates to AWS if you are negotiating employment or have an employment arrangement with AWS.

A public official is considered to be “negotiating employment” when they interview or discuss an offer of employment with an employer or the employer’s agent. (Regulation 18747(c)(1).) The Commission has construed the scheduling, conduct, and follow-up to an interview as one continuous process falling under the definition of “negotiating” employment. (*Bonner Advice Letter*, No. 1-98-287.) However, the mere act of sending a resume or application to a specific entity has not been considered “negotiating.” Similarly, entertaining informal inquiries about future plans and receiving expressions of general interest in discussing potential employment opportunities at some point in the future are not considered “negotiating.” (*Ibid.*) “A public official has an ‘arrangement’ concerning prospective employment when they accept an employer’s offer of employment.” (Regulation 18747(c)(2).)

Under the ban on influencing prospective employment, an official may not make, participate in making or influence decisions that “directly relate” to a prospective employer. As provided in Regulation 18747, a decision, “directly relates” to a prospective employer if the public official knows or has reason to know the prospective employer is “explicitly involved” in the decision, as defined in Regulation 18701(a) or it is reasonably foreseeable that the financial effect of a decision on a prospective employer is material under the materiality standards provided in Regulations 18702.1 and 18702.3(a)(1) through (3).

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<sup>2</sup> An individual campus of the California State University is also a “state agency” for purposes of the Act. (*Waggoner Advice Letter*, No. A-85-146).

In this case, while Cal Poly currently has a contract with AWS, you are not involved in any procurement or contracting decisions concerning AWS specifically. Thus, the question is whether it is reasonably foreseeable that AWS will be materially affected by any Cal Poly decisions, as defined by Commission's conflict-of interest regulations. This is a case-by-case factual determination. You have not provided any facts concerning any specific decisions. Therefore, we can only generally advise that if you are negotiating employment or have an employment arrangement with AWS, Section 87407 will prohibit you from making, participating in the making, or using your official position with Cal Poly or to influence any governmental decisions with a reasonably foreseeable material financial effect on AWS.

### The Permanent Ban

The "permanent ban" prohibits a former state employee from "switching sides" and participating, for compensation, in any specific proceeding involving 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. (See Sections 87401-87402; Regulation 18741.1.)

The permanent ban is a lifetime ban and applies to any judicial, quasi-judicial, or other proceeding in which you participated while you served as a state administrative official, in which the State of California is a party or has a direct and substantial interest. (Section 87401). "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).) Additionally, a supervisor is deemed to have participated in any proceeding where the supervisor's duties include the primary responsibility within the agency for directing the operation or function of the program where the proceeding is initiated. (Regulation 18741.1 (a)(4)(A).)

You are an employee of Cal Poly, a state agency, and thus the permanent ban will apply to you when your employment ends. While you have identified duties related to DxHub, which is part of AWS' network of CIC, and CalPoly's registration as an ATP, the duties identified do not include previous participation in particular matters involving a specific party or parties to which the permanent ban may apply. We generally caution however that the permanent ban will prohibit you, upon leaving state service, from "switching sides" and participating, for compensation, in any particular matters involving specific parties, including assisting others in the proceeding, if the proceeding is one in which you participated while employed by Cal Poly.

### The One-Year Ban

The "one-year ban" prohibits a former state employee from being paid to appear before or communicate with the employee's former agency for the purpose of influencing any administrative or legislative actions 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; Regulation 18746.1.) The one-year ban applies to state employees who hold positions that are designated in their agency's conflict-of-interest code, or that should be designated in the agency's conflict-of-interest code. (Section 87406(d)(1); Regulation 18746.1(a)(4).)

You have stated that your position is not designated in Cal Poly's conflict of interest code. Accordingly, we must examine whether your position should be designated. Positions involving "making" or "participating in making" governmental decisions with a reasonably foreseeable material effect on a financial interest should be designated positions. (Section 87406(d)(1).) As provided in Regulation 18704:

(a) Making a Decision. 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.

(b) Participating in a Decision. 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.

Based upon the facts provided, there is no indication that your position was tasked with making decisions or participating in decisions without significant intervening substantive review. Furthermore, your description of the facts indicates that your authority to recommend vendors was limited to researching viable technical solutions to improve business operations. You are not, nor were you ever, involved in decisions concerning Cal Poly's contract with AWS for cloud technologies.

Additionally, under Section 87301, "Conflict of Interest Codes shall be formulated at the most decentralized level possible," and we generally defer to the agency's determination unless there is reason to suggest that the determination is incorrect. Accordingly, the facts provided do not indicate that you should be designated in Cal Poly's conflict of interest code, and we must defer to this determination. Barring any additional facts, the one-year ban will not apply to you once you leave Cal Poly.

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

Sincerely,

Dave Bainbridge  
General Counsel



By: Toren Lewis  
Counsel, Legal Division