



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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August 14, 2024

Sumi Hoshiko
163 Miramonte Dr.
Moraga, CA 94556

Re: Your Request for Advice
Our File No. A-24-057

Dear Ms. Hoshiko:

This letter responds to your request for advice regarding post-governmental employment provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the post-governmental employment 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.

QUESTIONS

1. As a former Research Scientist Supervisor with the California Department of Public Health (CDPH) who left office in June 2024, are you subject to the one-year and permanent ban under the post-governmental employment provisions of the Act despite not being designated in your former agency’s conflict of interest code?

2. If you are subject to the one-year and permanent bans under the Act, would you be permitted to seek employment as a consultant with a technology company who seeks to gain CDPH as a client?

CONCLUSIONS

1. Because you made governmental decisions beyond simply clerical or ministerial decisions that involved contracts and hiring decisions and you had supervisory authority, you have

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.

participated in governmental decisions that could foreseeably give rise to a material financial effect on any financial interest. Therefore, you are subject to the post-governmental employment provisions of the Act.

2. While neither the one-year ban nor permanent ban prohibit you from working as a consultant of a technology company seeking to contract with CDPH, the provisions of these bans will place certain restrictions on the type of work you are able to perform, as detailed below.

FACTS AS PRESENTED BY REQUESTER

You were formerly employed as a Research Scientist Supervisor of the Climate Change and Health Unit within the Environmental Health Investigations branch of CDPH. You permanently left state service on June 28, 2024. You are considering working for a company, Core Mobile, a technology company and are seeking advice on the post-governmental employment provisions of the Act in relation to work you would like to perform for this company.

During your former employment with CDPH you made decisions along with other investigators on research analysis, hiring, and two contracts. You, along with other collaborators, also worked with a local health department to conduct a study regarding exposure analysis of particulate in high wildfire risk areas. You also received a grant to support a student intern who conducted analyses related to the health effects of wildfire smoke. You supervised two research scientists, one who assisted with the described fire smoke study. You were a preceptor for a California Epidemiologic Investigation Service Program (Cal-EIS) fellow that provides training for new public health graduates in health departments. In the past you have supervised other interns and served as a liaison with the California Cancer Registry. You have collaborated in projects with the Office of Health Equity and have participated in meetings with them and other staff mandated to address climate change health effects and surveillance for impacts. At those meetings you provided general assistance and information regarding your research. You made decisions regarding the hiring of three research scientist positions. Generally speaking, the decisions you made were primarily related to what research to conduct and how to collaborate with other offices, including collaboratively applying for a grant. Your former position was not designated in CDPH's conflict of interest code.

Now that you have permanently left your position at CDPH you have the opportunity to consider consulting for a company, Core Mobile, a technology company working to streamline patient care and workflows, increase capacity without the need for additional staff or facilities, through innovation and technology tools that create operations and informational efficiency and improve patient outcomes. Your proposed work would be to recommend to Core Mobile areas of CDPH that would potentially benefit from this technology and, if appropriate, facilitate exploration of these options. You confirmed that Core Mobile has not had business in the past with CDPH and you have not participated in decisions related to Core Mobile at any time during your employment.

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." In addition, Colloquially, these provisions are known as the "revolving door" prohibitions.

One-Year Ban

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).) You participated in making such governmental decisions, for example, by taking part in hiring and contract and grant-related decisions. Therefore, it appears you should have been designated in your agency's conflict of interest code and you are subject to the 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.

In contrast to the permanent ban, which only applies to certain "judicial or quasi-judicial" proceedings, the one-year ban applies to "any appearance or communication 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." (Regulation 18746.1(b)(5).) An appearance or 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." (Regulation 18746.2(a).) An appearance or communication includes conversing by telephone or in person, corresponding in writing or by electronic transmission, attending a meeting, and delivering or sending any communication. (*Ibid.*) An appearance or communication is not for the purpose of influencing administrative or legislative action 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. (Regulation 18746.2(b).)

Appearances and communications are prohibited if they are (1) before a state agency that the public official worked for or represented or (2) before a state agency "whose budget, personnel, and other operations" are subject to the control of a state agency the public official worked for or represented. (Regulation 18746.1(b)(6).) We have advised that a former agency official may, without violating the one-year ban, draft proposals on a client's behalf to be submitted to their former agency so long as the former employee is not identified in connection with the client's efforts to influence an administrative action. (See, e.g., *Nichols* Advice Letter, No. I-23-058; *Cook* Advice Letter, No. A-95-321; *Harrison* Advice Letter, No. A-92-289.)

You left office on June 28, 2024, and are now considering a position as a consultant. As a consultant, you are generally subject to the one-year ban until June 29, 2025. You do not say in the facts provided that there is any requirement that you communicate with CDPH for the consulting position you are considering with Core Mobile. You do however state that you may be asked to

“facilitate exploration” of options to assist CDPH with Core Mobile’s technology. We note that you may consult with Core Mobile and assist them in preparation for communication with CDPH but you may not personally communicate with CDPH as part of the position as you may not communicate with your prior agency for compensation for a period of one-year from the date you permanently left your position. We highlight that even being identified in a communication (for example an email) to your former agency is prohibited by the one year ban.

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).) Here, because you performed duties beyond clerical, secretarial, or ministerial duties and you engaged in conduct related to proceedings before CDPH you are subject to the permanent ban.

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 permanently left your position in June 2024 and are subject to the prohibitions contained in the permanent ban. The permanent ban only applies to a 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. You provided that Core Mobile has not previously has business before CDPH. Based on your description of your former job duties at CDPH, it does not appear your work for Core Mobile would require you to participate in a proceeding you previously took part in as a CDPH official. However, if you have questions regarding a specific proceeding you took part in and how it relates to your work at Core Mobile, you should request additional advice.

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

Sincerely,

Dave Bainbridge
General Counsel

By:


Valerie Nuding
Counsel, Legal Division

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