



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 8, 2023

Yuvaraj Sivalingam
Policy Advisor
1215 K Street | Suite 1110
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-23-154

Dear Mr. Sivalingam:

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

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, you should contact us for additional advice.

QUESTION

Do the Act’s “revolving door” provisions prohibit you, as former Deputy Supervisor for Policy and Administration of the California Department of Conservation’s (DOC) Geologic Energy Management Division (“CalGEM”), from representing Renewell Energy, a client of your current employer, Arnold & Porter Kaye Scholer LLP (“Arnold & Porter”), before your former agency, to advocate for potential legislation to advance the development of gravity well energy storage in California?

CONCLUSION

Under the Act, the “one-year ban” does not apply to you because you left CalGEM more than one year ago. The permanent ban applies to you with respect to your employment with Arnold & Porter and prohibits your participation in a proceeding involving specific parties in which you

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.

previously “participated” as discussed below. However, the permanent ban does not prohibit you from advocating for general statutes. Accordingly, to the extent the legislation involves the making of rules or policies of general applicability, the permanent ban does not apply. We caution though that proceedings involving legislation specific to a client, such as a special statute, and related to a proceeding involving the client in which you participated as a CalGEM official, may be subject to the permanent ban. To the extent there is any indication that the legislation would be specific to your Client and that you previously participated in a related proceeding involving your Client, you should seek additional advice detailing the legislation and your previous participation in any related proceedings.

FACTS AS PRESENTED BY REQUESTER

From August 2020 to October 31, 2022, you served as Deputy Supervisor for Policy and Administration for the Department of Conservation, California Geologic Energy Management Division (“CalGEM”). As part of CalGEM’s executive team, you supported the State Oil and Gas Supervisor in managing the organization and coordinated more than 300 staff responsible for regulating California’s oil, gas, and geothermal industries, while advancing key initiatives related to public health, reducing greenhouse gas emissions, and addressing orphan wells.

On October 31, 2022, you ceased all work for CalGEM and turned in your laptop, phone, and keycard, though you continued to receive compensation for accrued leave credits until November 4, 2022. Since November 2022, you have served as a Policy Advisor for Arnold & Porter in Sacramento, where you advise the firm’s clients on achieving their legislative and policymaking objectives, with a focus on offshore wind development, carbon capture and removal, geothermal energy, and textile recycling.

One of your current clients, Renewell Energy (the “Client”), is a startup developing gravity well energy storage technology that can repurpose idle oil and gas wells to an energy storage solution. On behalf of your Client, you expect to engage your former agency, CalGEM, to discuss a potential legislative solution that would advance the development of gravity well energy storage in California. CalGEM has regulatory authority and jurisdiction over California’s subsurface oil and gas infrastructure.

You now seek advice regarding whether the Act’s post-governmental employment provisions permit you to advocate for this proposed legislation before your former agency.

ANALYSIS

Public officials who leave state service 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.

The One-Year Ban

The Act’s “one-year ban” prohibits designated employees of state administrative agencies, for one year after leaving state service, from representing any other person by appearing before or communicating with, for compensation, their former agency in an attempt to influence agency

decisions that involve the making of general rules (such as regulations or legislation), or to influence certain proceedings involving a permit, license, contract, or transaction involving the sale or purchase of property or goods. (Section 87406(d)(1).)

The one-year ban applies for twelve months from the date the employee “permanently leaves” state employment, which is defined as the date the official is no longer authorized to perform the duties of the office or employment and the official stops performing those duties, *even if the official continues to receive compensation for accrued leave credits*. (Regulations 18746.1(b)(1.) and 18746.4(b).)

Though you were compensated for unused leave up until November 4, 2022, you ceased all work for CalGEM and turned in your laptop, phone, and keycard on October 31, 2022. Therefore, for purposes of the one-ban, you permanently left office on October 31, 2022, over 12 months ago. Thus, the one-year ban is no longer applicable to you.

The Permanent Ban

The permanent ban prohibits a former state employee from switching sides and participating, for compensation, in a particular proceeding involving the State of California and other specific parties or assisting in the proceeding if the proceeding is one in which the former state employee participated while employed by the state. (Sections 87401, 87402; Regulation 18741.1.) 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 the official participated while a state employee.

You are a former employee of CalGEM, a state agency, and thus the permanent ban applies to you. You are being compensated by Arnold & Porter to represent another person—namely, the Client—and to communicate with your former agency, CalGEM, for the purpose of influencing CalGEM. Thus, the determinative issue is whether the proposed legislation you will be paid to advocate for constitutes a “proceeding” for purposes of the permanent ban and, if so, whether you “participated” in this proceeding while working for CalGEM.

Unlike the one-year ban, which applies to agency *decisions* that involve the making of *general rules such as regulations or legislation*, the permanent ban applies to any *judicial, quasi-judicial*, or other *proceedings* 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).) Thus, the permanent ban only applies to proceedings that affect the rights or claims of specific parties; it does *not* apply to proceedings that involve the making of rules or policies of general applicability, such as most legislation.

In the *Erlingsson Advice Letter* (I-20-139) we analyzed facts similar to yours and advised that the permanent ban generally applied to a former Director of the Department of Conservation

(which CalGEM is a division of) with respect to his work on behalf of a trade association, including “advocacy for changes in the Department’s *regulation and policy*... regarding policy issues such as well stimulation treatment operations (including hydraulic fracking), carbon capture, and utilization and storage.” However, we noted that the adoption, amendment, or repeal of *regulations* are generally not considered “judicial, quasi-judicial or other proceedings,” because they involve the formulation of rules of general application applied prospectively, and not the rights or claims of specific parties. Similarly, the proposed legislation at issue in your case would generally not be considered a “judicial, quasi-judicial or other proceeding” for purposes of the permanent ban, since legislation typically involves the formulation of rules of general application, applied prospectively, and not the rights or claims of specific parties.

That said, we cautioned in the *Erlingsson* letter that “where a regulation or policy decision focused on specific parties, it may meet the definition of a ‘proceeding’ subject to the permanent ban.” Likewise, we caution that our advice pertains only to your legislative advocacy related to *general statutes*, which pertain uniformly to an entire community or all persons generally. By contrast, a *special statute*, meaning a law that applies to a particular person, place, or interest, may meet the definition of a “proceeding” subject to the permanent ban. We lack sufficient facts to determine whether your legislative advocacy on behalf of your Client before CalGEM may involve a special statute, and thus constitute a “proceeding” subject to the permanent ban. Likewise, you have not identified previous participation in a proceeding involving your Client as a CalGEM official. Should there be any indication that the legislation is specific to your Client and that you previously participated in a related proceeding involving your Client, you should seek additional advice identifying the nature of the legislation and fully describing your previous participation in any related proceedings.

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

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