



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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(916) 322-5660 • Fax (916) 322-0886

August 30, 2024

Joe Stuyvesant
13457 Farraday Ridge Dr
Jamul, CA 91935

Re: Your Request for Advice
Our File No. A-24-084

Dear Mr. Struyvesant:

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

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

For purposes of the local one-year ban, does being placed on administrative leave constitute having permanently left office such that the twelve-month time period runs from the first day of your administrative leave, July 11, 2023?

CONCLUSION

No. Pursuant to Section 87406.3(a) and Regulation 18746.4(b), an official placed on administrative leave has not permanently left office. Accordingly, the one-year ban for your position began on January 19, 2024, the day you resigned from your position.

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.

FACTS AS PRESENTED BY REQUESTER

You are the former Executive Director/President/Chief Executive Officer of the Port of San Diego (the “District”). On July 11, 2023, you were placed on paid administrative leave by the Board of Port Commissioners pending the completion of an investigation. The memorandum issued to you by the Board on July 11, 2023, specified, in part:

(1) You shall be relieved from your duties as Executive Director/President/CEO during the time your paid administrative leave remains in effect;...(5) you must surrender any and all District property in your possession, including but not limited to office keys, and District identification; (6) Your access to all District email and other electronic systems is to be immediately suspended; (7) you are not authorized to return to any District facility.

During this time, you had no contact with any District employees/Commissioners (other than attorneys and HR staff as it related to your status) and no engagement in or discussion of any District business with any persons. The order remained in effect until your voluntary resignation on January 19, 2024. From July 11, 2023, until your resignation on January 19, 2024, you were not authorized to perform any of the duties of your office, nor did you do so.

In a follow-up email you confirmed that for the entire time you were on administrative leave you were paid your regular salary. Upon resigning from the District in January 2024, you were then paid accrued leave credits.

ANALYSIS

High-level local governmental officials who leave governmental service are subject to the Act’s one-year ban for local officials under Section 87406.3. This law prohibits certain former local officials, including chief administrators of special districts, from making any oral or written communication to their former agencies, for compensation and in representation of another person, for the purpose of influencing any legislative or administrative actions “for a period of one year after leaving that office or employment.” (Section 87406.3(a).) As the former President and CEO of the Port of San Diego, a “special district” as defined by Section 82048.5, you are subject to the local one-year ban.

The local one-year ban commences when the official has permanently left office, as defined in Regulation 18746.4(b). (Regulation 18746.3.) Regulation 18746.4(b) provides that for purposes of the local one-year ban, the following apply:

(1) The date on which an official permanently leaves office or employment is the date on which the official is no longer authorized to perform the duties of the office or employment, and stops performing those duties, including making, participating in making, or attempting to use official position to influence any governmental decision.

(2) A person shall not be deemed to have left office permanently because the person is on a leave of absence or serves as an intermittent employee. However, a person shall be deemed

to have left office permanently if the person merely receives compensation for accrued leave credits.

Thus, the one-year ban applies for twelve months from the date the official has left the office or employment. Subdivision (b)(1) defines permanently leaving office or employment as the date the official is no longer authorized to perform the duties of employment and the official stops performing those duties. However, for purposes of determining when an official has permanently left office for purposes of the local one-year ban, subdivision 18746.4(b)(2) is also applicable.

Pursuant to subdivision (b)(2), a person shall not be deemed to have “permanently” left office where the person is on a leave of absence or is an intermittent employee, unless the person is merely receiving compensation for accrued leave credits. Here, while you were placed on administrative leave as of July 11, 2023, and relieved of your employment duties, you were not released from your position, nor was there any indication that you would never return. Indeed, the memorandum issued to you referenced your administrative leave “pending completion of an investigation,” inferring a potential for return.

Further, during this time you were paid your regular salary. Looking to the plain language of the statute, you had not left “office or employment,” as you were still employed by the District and receiving a salary. The provision found in subdivision (b)(2) stating that a person will be deemed to have permanently left even if receiving compensation for accrued leave credits is inapplicable here. During your administrative leave you were not receiving compensation for accrued leave, but your contracted salary. Upon your resignation on January 19, 2024, you were then paid out for your accrued leave credits.

Thus, even though you were placed on administrative leave and not permitted to perform the duties of your office as of July 11, 2023, you remained an employee of the District and received a salary (not compensation for accrued leave) until January 19, 2024. For purposes of the statute and regulation, the day you left office is January 19, 2024, such that the local one-year ban runs from that date.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Erika M. Boyd
Senior Counsel, Legal Division

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