



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 6, 2018

Tom Brandeberry
President & CEO
Rural Community Development
Corporation of California
1904 5th Street
Sacramento, CA 95811

Re: Your Request for Informal Assistance
Our File No. I-18-007

Dear Mr. Brandeberry:

This letter responds to your request for advice regarding the post-government employment 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. Because your questions are general in nature, we are treating your request as one for informal assistance.²

QUESTION

May you work as a salaried employee of the non-profit Rural Community Development Corporation of California ("RCDCC") on future Community Development Block Group Program ("CBDG") planning grants awarded by the Department of Housing and Community Development, where you were formerly employed as a Section Chief with oversight of the CBDG program?

CONCLUSION

Yes. The permanent ban applies only to proceedings you previously participated in as a state service. It does not apply to planning grants applied for after you left state employment.

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 18110 through 18997 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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS

You worked as a Section Chief, supervising the federally funded CDBG program, among other programs,³ during your employment at the Department of Housing and Community Development (“HCD”) from 2009 until December, 2015. While employed at HCD you supervised support staff and were responsible for all aspects of the CDBG program. Your duties included acting as a liaison with Department Housing and Urban Development (“HUD”), as the State’s funding agency, development of the program’s Notice of Funding Availability (“NOFA”), awarding of contracts, state regulation changes, and federal reporting requirements. The NOFA is prepared each year. Each NOFA reflects that year’s funding, and is a separate process of notice, application and awarded contracts by HCD. The last NOFA and awarded contracts you were involved in for this program, and other HCD programs, was in December of 2015. You state that most of the contracts you participated in are now closed or inactive, but that some contracts are in various stages of completion, such as the 2015 CDBG.

Following your retirement from HCD, you formed a 501(c)(3) non-profit organization, Rural Community Development Corporation of California (“RCDCC”). You are president and chief executive officer for the non-profit. You anticipate receiving a salary as an employee of the non-profit in the future, but have not received any funds to date.

ANALYSIS

Public officials who have left 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. (Sections 87400-87406 and Regulation 18746.1.) You left state service over two years ago, so the only issue is whether the permanent ban bars your participation in planning grants applied for after you left state service.

The permanent ban prohibits a former state employee from “switching sides” and participating for compensation in certain proceedings involving the state and other specific parties, 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 is a lifetime ban and applies to any formal or informal appearance or any oral or written communication made with the intent to influence a judicial, quasi-judicial, or other proceeding in which you participated while serving as a state administrative official. (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).)

The permanent ban does not apply to “new” proceedings even in cases where the new proceeding is related to, or grows out of, a prior proceeding in which the official had participated. New contracts with the employee’s former agency in which the former employee did not participate

³ You also managed three other federally funded programs while at HCD: HOME Investment Partnership Program (HOME); Neighborhood Stabilization Program (NSP); and the Disaster Recovery Initiative (DRI).

are considered new proceedings. (*Leslie* Advice Letter, No. I-89-649.) 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; also, see *Donovan* Advice Letter, No. I-03-119.)

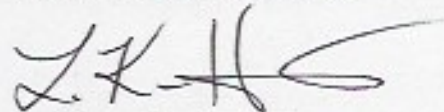
An official is considered to have "participated" in a proceeding if he or she took part in the proceeding personally and substantially through decision, approval, disapproval, formal written recommendation, rendering advice on a substantial basis, investigation or use of confidential information as an officer or employee . . ." (Section 87400(d).) Additionally, a supervisor is deemed to have participated in any proceeding where the supervisor's duties include the primary responsibility with the agency for directing the operation or function of the program where the proceeding is initiated. (Regulation 18741.1(a)(4)(A).)

Because of your personal and substantial involvement as a supervisor of HCD programs such as CBDG, in preparing the NOFAs and awarding the contracts, you are permanently banned from representing any person or entity (other than the state) before any court or state administrative agency or any officer or employee thereof, for compensation, on any of the contracts or NOFAs in which you participated while a state employee. However, the permanent ban does not apply to planning grants applied for after you left state service because the application would be a new proceeding in which you did not participate.

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

Sincerely,

Brian G. Lau
Assistant General Counsel



By: L. Karen Harrison
Counsel, Legal Division

LKH:jgl