



Revolving Door Restrictions For Local Officials Frequently Asked Questions (FAQs)

3/14/06

1. What the revolving door restrictions basically do?

State officials have been precluded from representing individuals before their agencies for one year after leaving office.¹ Beginning in 2006 that requirement also applies to a number of local officials, including elected officials and city and county managers.²

2. To whom more specifically does the restriction apply?

These restrictions apply to:

- ⇒ Local elected officials;
- ⇒ Chief administrative officers of counties;
- ⇒ City managers; and
- ⇒ General managers and chief administrators of special districts.³

The law is a bit unclear on whether it applies to school district or joint powers authorities officials. The law cross references Government Code section 82041, which defines local government agencies as including counties, cities or districts “of any kind including school district[s], or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.”

3. What kinds of activities are prohibited?

The threshold question to ask is whether the former official is being paid. If so, the next question is whether the former official is acting as an agent or attorney for someone, or otherwise representing them before the former official’s agency for the purpose of:

- Influencing administrative or legislative action;

- ❑ Influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a:
 - Permit,
 - License,
 - Grant, or
 - Contract.

- ❑ Influencing the sale or purchase of goods or property.⁴

The revolving door prohibitions go on to leave virtually no room for misunderstanding of the kind of activities that are prohibited.

For example, the definition of “administrative action” is very broad. It means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial.⁵ So if the former official were paid to influence any of these kinds of activities, the activities would be unlawful under the new revolving door restriction.

What about the definition of “legislative action?” Those activities mean the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body (or any of its members, committees, subcommittees or employees acting in their official capacities).⁶ So if the former official were paid to influence any of these kinds of activities, the official’s actions would be impermissible.

The law goes on to specify what kinds of contact are impermissible:

- ❑ Making any formal or informal appearance before the official’s former agency, including its governing body, committees or subcommittees, and
- ❑ Making any oral or written communication to the official’s former agency (including its governing body, committees or subcommittees, as well as officers or employees).

Again the key is whether the former official is paid to make these kinds of appearances or communications for the purpose of influencing the former official’s agency’s administrative or legislative actions.⁷

4. What is the timing?

The section is effective July 1, 2006.⁸ The prohibition applies for one year after leaving office.⁹ Thus, if a city manager leaves office on May 31, 2006, she technically would not be violation of state law (and this assumes no local revolving door proscriptions) if she were to be paid to represent a private developer before her city during the month of June. But she would need to discontinue that representation beginning July 1 and discontinue such activities until May 30, 2007.¹⁰

And, of course, the law sets only minimum standards for ethical behavior. Even though the law does not kick in until July 1, covered officials should carefully evaluate the costs, in terms of public perceptions, of delaying compliance.

5. Are there any exceptions to the state-imposed revolving door restrictions?

The law applies only to conduct for which the former official is compensated. Volunteer activities are not covered. Note, too that the regulation interpreting the *state official* revolving door ban says that volunteers can accept reimbursement for necessary travel, meals, and accommodations directly related to their volunteer services and still remain in compliance with the restrictions.¹¹

There also is an exception if the former official is an employee of or serves in a leadership capacity (board member or officer) at another public agency and the official is representing that agency before his or her former agency.¹²

Note too that the definition of “administrative action” does not include any action that is solely ministerial.¹³ This term is not defined in SB 8, but generally refers to mandatory, nondiscretionary actions where the agency must grant (or deny) an application based on the presence (or absence) of a predetermined set of conditions.¹⁴ An example is a final map approval under the Subdivision Map Act, when the agency only determines whether the applicant has met the conditions in the tentative map.

6. Do the state-imposed restrictions supersede any local revolving door restrictions?

No. The state law specifically says that it does not preclude a local government agency from adopting an ordinance or policy that restricts the appearance of a former local official before that local government agency if that ordinance or policy is more restrictive than the state law restriction.

7. What about arrangements in which an official contracts with his or her former agency to provide services to ease the transition?

This does not present an issue under the state revolving door laws. However extreme caution and close consultation with one's agency attorney is advisable whenever one contemplates a contract with one's agency. Another state law has a very strict prohibition against self-dealing on contracts.¹⁵ The consequences of violating this prohibition are severe, including not getting paid for one's services under the contract and felony criminal prosecution.¹⁶

Legally, the prudent course of action may be to negotiate any contracts for services only *after* one has left the agency's service. There also can be issues relating to how much one can work while drawing retirement benefits. If this is an issue, consult with the applicable regulations for your retirement system.

8. Are there any other considerations of which one should be aware in this area?

It is always important to remember that the law sets a floor for ethics in public service—not a ceiling. Even when all legal requirements relating to one's activities after leaving an agency have been satisfied, the media and the public can still have a perception of impropriety. Don't forget to engage in a worst-case scenario of how a hostile media might characterize one's activities and how such a characterization may shape the public's trust in both you and the agency you used to serve.

8. Where can I go for further information?

The Fair Political Practices Commission has prepared a booklet for *state* officials on this topic. It is called [*Revolving Door and Other Post-Employment Issues: Leaving Your State Job? Post-Employment Restrictions May Affect You.*](#) Keep in mind as you are reviewing it that the state restrictions tend to be much more extensive though.

Endnotes:

¹ See Cal. Gov't Code § 87406.

² See Cal. Gov't Code § 87406.3.

³ See Cal. Gov't Code § 87406.3(a).

⁴ See Cal. Gov't Code § 87406.3(a), which reads as follows:

A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041 shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is 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.

⁵ See Cal. Gov't Code § 87406.3(d)(1).

⁶ See Cal. Gov't Code § 87406.3(d)(2).

⁷ See Cal. Gov't Code § 87406.3(a).

⁸ See Cal. Gov't Code § 87406.3(e).

⁹ See Cal. Gov't Code § 87406.3(a).

¹⁰ In *People v. Henderson*, 107 Cal.App.3d 475, 166 Cal.Rptr. 20 (3d Dist.1980), the court explained the purpose of having a different operative date this way:

Under the California Constitution, a statute enacted at a regular session of the Legislature generally becomes effective on January 1 of the year following its enactment except where the statute is passed as an urgency measure and becomes effective sooner. (Cal. Const., art. IV, § 8, subd. (c)(1).) In the usual situation, the "effective" and "operative" dates are one and the same, and with regard to ex post facto restrictions, a statute has no force and effect until such effective-operative date. [citation omitted] Yet, as here, the Legislature may deem it necessary to postpone the operation of certain statutes until a later time. (See 26 Ops.Cal.Atty.Gen. 141, 143 (1955).) Just as the Legislature may provide for an operative date subsequent to an effective date of a statute to allow persons affected to become acquainted with and implement its provisions [citation omitted] . . .

See *id.* at 488, 166 Cal. Rptr. at 28. See also *Sutherland's Statutory Construction*, § 33:7 at page 23 ("The purpose of a future effective date is to inform people of the provisions of a statute before it becomes effective so that they may . . . discharge their obligations.")

¹¹ See Cal. Code of Regs. § 18746.1(b)(3).

¹² See Cal. Gov't Code § 87406.3(b) (the prohibition does "not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another local **government** agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency").

¹³ See Cal. Gov't Code § 87406.3(d)(1).

¹⁴ *Rodriguez v. Solis*, 1 Cal. App. 4th 495 (1991). Typical examples include approval of a final subdivision map and issuance of building and occupancy permits. *Youngblood v. Board of Supervisors*, 22 Cal. 3d 644 (1978); *Thompson v. City of Lake Elsinore*, 18 Cal. App. 4th 49 (1993).

¹⁵ See Cal. Gov't Code § 1090 ("Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members . . .").

¹⁶ See Cal. Gov't Code § 1097.