

Advisory Opinion No. 18-01

Reviewing and clarifying the application of the post-employment provisions of the Public Officers Law

SUMMARY

The Public Officers Law's post-employment restrictions promote the public's confidence in State government by barring State employees, after leaving State service, from unfairly leveraging relationships and knowledge developed during their employment to unjustly benefit themselves or others. Given their nature, these restrictions are not only of significant interest to every former, current, and future State employee, but to entities that hire such individuals after State service, as well as the public.

Over the last 30 or more years, the Joint Commission on Public Ethics (the Commission) and its predecessors have developed a considerable corpus of opinions to address the many instances where post-employment restrictions come into play; by necessity, this has been an ongoing process and as the world has grown more complicated, so have the various situations confronted with the statutory bars. It logically follows that after such a period, it makes sense for the Commission to step back and take a look at the advice it and its predecessors have given to see whether the legal conclusions that it has drawn remain not only clear, but relevant and true and aligned with the underlying policy of the Public Officers Law which the Commission is exclusively charged with interpreting.

This Advisory Opinion does not undermine existing exceptions to the post-employment bar, but it does resolve difficulties and ambiguities that may have accrued over the years in applying the post-employment restrictions and, thereby, better aligns day-to-day practice under the Public Officers Law with that law's underlying policy objectives. Advisory Opinion 18-01 will ensure that post-employment restrictions do not unduly restrict an individual's ability to engage in his or her occupation where such restrictions are not needed under the law to protect the integrity of and public confidence in government; restricting for the sake of restricting is not what the law requires.

With respect to the 2-year bar, going forward, the Commission will interpret and apply the "appear or practice" clause consistent with Advisory Opinion No. 99-17 which clearly bars those communications and actions by a former state employee within 2 years of leaving State service which are intended to influence that employee's former agency to make a specific decision or to take a specific action. Similarly, the Commission will interpret the "backroom services" clause to prohibit being compensated for rendering services to a person or entity in connection with a matter before that person's former agency with respect to a decision by the agency that advances its mission.

The lifetime bar can be a particularly onerous prohibition, because it never expires. The restriction focuses on a particular matter and the individual's role, if any, in that matter while in State service. But experience has shown that given the complexity and lengthy disposition of many matters, there is no "one size fits all" method of applying the bar. Indeed, while most "projects" may be sufficiently discrete to constitute a single transaction for lifetime bar purposes, applying this concept across the board without analyzing the nature of the transaction, including the amount of time spent on consummating

it, and the specific role and level of involvement of a State employee could produce a prohibition of excessive and unnecessary scope which is not mandated by law or and does not further public policy.

Thus, going forward, the Commission will continue to consider on a case-by-case basis whether a large, extensive project is a single transaction for lifetime bar purposes. The Advisory Opinion sets forth a non-exhaustive list of factors the Commission will consider when determining whether the lifetime bar applies in the context of a large project, and indeed, any government decision. These common-sense factors will serve as meaningful guideposts to State employees, private employers, and the public as to what constitutes ethical conduct.