



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

May 23, 2022

MEMORANDUM

SUBJECT: Impartiality Determination to Participate in Certain Specific Party Matters Involving the State of California

FROM: Justina Fugh
Alternate Designated Agency Ethics Official and Director, Ethics Office

TO: Sarah Sharpe
Chief of Staff
Region 9

As Chief of Staff to the Regional Administrator for the United States Environmental Protection Agency (EPA) Region 9, you seek permission to participate in specific party matters involving the State of California. Prior to being selected for this position, you served as Senior Advisor for External Affairs for a commissioner of the California Public Utilities Commission.

I understand that you have a defined benefit plan with the State of California. As such, you have a financial conflict of interest pursuant to 18 U.S.C. § 208. Under this criminal statute, you cannot participate personally and substantially in any particular matter that will affect the State's ability or willingness to honor its contractual obligations with respect to your state retirement interests. In the Agency's experience, it is unlikely that you as the Chief of Staff will be in any position to affect the State's ability or willingness to pay these benefits to its retirees. I do not expect, then, that 18 U.S.C. § 208 will prohibit you from carrying out your official EPA duties.

What remains is an impartiality concern. The applicable ethics rules are set forth in the Standards of Ethical Conduct for Employees of the Executive Branch, 5 C.F.R. Part 2635, specifically Subpart E, "Impartiality in Performing Official Duty." Upon assuming the position of Chief of Staff, you will have a "covered relationship" with the State of California pursuant to 5 C.F.R. § 2635.502(b)(1)(iv). For one year after you resigned from the Public Utilities Commission, absent an impartiality determination from an EPA ethics official, you cannot participate in any specific party matter in which the State of California is a party or represents a party if that matter is likely to have a direct and predictable effect upon the State or if the circumstances would cause a reasonable person with knowledge of the relevant facts to question your impartiality. *See* 5 C.F.R. § 2635.502(a).

Federal ethics regulations permit federal employees to participate in matters that might raise impartiality concerns when the interest of the federal government in the employee's participation outweighs concern over the questioning of the "integrity of the agency's programs and operations." 5 C.F.R. § 2635.502(d). The factors that the Agency takes into consideration are:

- (1) the nature of the relationship involved;
- (2) the effect that resolution of the matter will have upon the financial interest of the person affected in the relationship;
- (3) the nature and importance of the employee's role in the matter, including the extent to which the employee is called upon to exercise discretion in the matter;
- (4) the sensitivity of the matter;
- (5) the difficulty of reassigning the matter to another employee; and
- (6) adjustments that may be made in the employee's duties that would reduce or eliminate the likelihood that a reasonable person would question the employee's impartiality.

As Chief of Staff, you are one of the leaders of your Region, responsible for advising the Regional Administrator. You will likely be asked to participate in discussions and meetings related to particular matters that affect California. Because I conclude that the interest of the United States Government in your participation outweighs any concerns about your impartiality, I am authorizing you to participate now as Chief of Staff in particular matters that involve the State of California, but not for any interactions involving the California Public Utilities Commission as an entity. In making this determination, I have taken the following factors into consideration:

Nature of the relationship involved – From January 2018 to May 2022, you served as senior advisor for external affairs to California Public Utilities Commissioner Martha Guzman, who is now the EPA Regional Administrator. You did not hold any position with the state environmental regulatory agency through which California shares responsibility with EPA in protecting human health and the environment. With respect to many of our statutes, EPA has directly delegated states with regulatory and enforcement authority. In fact, EPA, through its regions, works closely and directly with states on a continuing and frequent basis.

Effect of the matter upon your financial interest

I understand that you have a defined benefit plan with the State of California. Although you have a financial conflict of interest pursuant to 18 U.S.C. § 208, it is not disqualifying. *See* 5 C.F.R. §§ 2640.201(c)(1)(ii) and 2640.201(c)(2). In EPA's experience, it is unlikely you as the Chief of Staff will be in any position to affect the State's ability or willingness to pay benefits to its retirees.

Nature and importance of the employee's role – In your role as Chief of Staff, you will be expected to provide advice and support to the Regional Administrator, who is responsible for four states, the Pacific Islands, and 148 Tribal Nations. You will be expected to communicate freely with all of the jurisdictions in your region, including California.

Sensitivity of the matter – We anticipate that there will be specific party matters in which you may be asked to participate, including ones that merit your participation and raises nationally significant issues.

Difficulty of reassigning the matter to another employee – Your participation in regional and nationally significant issues will be of importance to the Regional Administrator.

While we have issued you this determination to interact with the State of California, except with the California Public Utilities Commission itself, nothing in this impartiality determination should preclude you from choosing to recuse yourself voluntarily, although you are advised to confer with OGC/Ethics or your Regional Counsel should such a circumstance arise. You should also consult with ethics officials if you have any questions about potential matters involving the California Public Utilities Commission as an entity.

This authorization will remain in effect for the remainder of your cooling off period. After May 22, 2023, you will no longer have a covered relationship with the State of California under the impartiality standards and will no longer require this determination.

If you have any questions regarding this determination, or if a situation arises in which you need advice or clarification, please contact me at fugh.justina@epa.gov or (202) 564-1786.

cc: Martha Guzman, Regional Administrator, Region 9
Deb Jordan, Deputy Regional Administrator, Region 9
Gretchen Busterud, Acting Regional Counsel, Region 9
Steven Jawgiel, Regional Ethics Counsel, Region 9