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## Chapter 680: Don't Let the Revolving Door Hit You On the Way Out of Local Office

Jenny Dione Dennis

### Code Section Affected

Government Code § 87406.3 (new).

SB 8 (Soto); 2005 STAT. CH. 680.

### I. INTRODUCTION

As a Chinese immigrant, Julie Lee's rise to political power in San Francisco exemplified the American dream for many.<sup>1</sup> She was a "grassroots activist" who managed to advance her political career to become a City Hall insider and President of the Housing Authority Commission during the Willie Brown administration.<sup>2</sup> Her inspirational rise to prominence, however, has now been tainted with allegations of corruption and participation in "patronage politics."<sup>3</sup> News articles allege that Julie Lee used her connections to manipulate local political decisions, alleging that she obtained fast-track approval of her zoning and building permits and secured multiple government jobs for her son.<sup>4</sup> This type of insider corruption has plagued large California cities over the past decade, most recently casting a shadow over the sunny city of San Diego.<sup>5</sup>

The turmoil in San Diego surrounds allegations that three acting City Councilmen were taking kickbacks from a strip club owner in exchange for their vigorous efforts to influence the city to lift the "no-touching" ban.<sup>6</sup> Chapter 680 is a conflict of interest statute designed to combat such corruption at the local government level.<sup>7</sup> Specifically, Chapter 680 enacts a local "revolving door"

1. Lance Williams, Vanessa Hua & Bill Wallace, *The Making of a Political Insider: Fund Raising Gave Lee Access to City Hall, But She Alienated Some Allies Along the Way*, S.F. CHRON., Aug. 15, 2004, at A1.

2. *Id.*

3. *See id.* (describing the turmoil that now surrounds Julie Lee's career); *see also* Rebecca Menes, *The Effect of Patronage Politics on City Government in American Cities, 1900-1910*, (Nat. Bureau of Econ. Research, Working Paper No. W6975, 1999), available at <http://ssrn.com/abstract=151569> (on file with the *McGeorge Law Review*) (clarifying that patronage politics refers to the ability of politicians and other activists to buy votes).

4. Williams et al., *supra* note 1.

5. Kelly Thorton, *Prosecution is Expected to Conclude its Case Today: Defense Attorneys Say Their Turn Will Take About Two Weeks*, SAN DIEGO UNION TRIB., June 23, 2005, at B2.

6. Elliot Spagat, *Top San Diego Officials Lose in Court*, CONTRA COSTA TIMES, July 19, 2005, at F4.

7. *See* CAL. FAIR POLITICAL PRACTICES COMM'N, A GUIDE TO THE POLITICAL REFORM ACT OF 1974: CALIFORNIA'S CONFLICT OF INTEREST LAW FOR PUBLIC OFFICIALS 2 (1994) (outlining the goals that the Political Reform Act is intended to accomplish).

statute.<sup>8</sup> Revolving door statutes are specific conflict of interest restrictions that address situations in which former government officials return to represent clients that have matters before or seek to influence policy decisions made by the official's former agency.<sup>9</sup> Chapter 680 imposes revolving door restrictions in an effort to prohibit former officials from using their political contacts for personal financial gain after they leave office.<sup>10</sup>

Californians, whose tolerance for political corruption at the state level had been exhausted, passed the Political Reform Act of 1974 ("Act").<sup>11</sup> This Act proscribes certain activities that implicate potential conflicts of interest and may compromise state governmental activities, but it fails to address corruption at the local level.<sup>12</sup> This lack of statutory restraint on the conduct of local government officials motivated the introduction of Chapter 680.<sup>13</sup> Prior to Chapter 680, cities and other local government entities were free to enact their own restrictions on the conduct of officials during and after their employment, but the Act imposed no consistent state-wide standard.<sup>14</sup>

## II. EXISTING LAW

### A. *The Political Reform Act of 1974*

In 1974, California voters took the initiative to combat political corruption by passing Proposition 9 to enact the Political Reform Act.<sup>15</sup> In an effort to restrict the activities of public officials when potential conflicts of interest might be involved, the Act provides guidelines for state officials.<sup>16</sup> The Act implements multiple post-employment restrictions and one restriction that affects conduct while in office.<sup>17</sup> Specifically, the Act imposes a lifetime ban that prohibits the former state official from appearing before or communicating with his former

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8. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 1 (July 5, 2005).

9. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENT, COMMITTEE ANALYSIS OF SB 8, at 2 (Mar. 16, 2005). An example of such a situation is when a former city manager, who is also a private developer, seeks to lobby his former office for approval of a construction permit in the year subsequent to his employment with the city. *Id.*

10. *See* ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 3 (July 5, 2005) (identifying the author's motivations for drafting SB 8).

11. CAL. FAIR POLITICAL PRACTICES COMM'N, *supra* note 7.

12. *See* ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 1-2 (July 5, 2005) (addressing the fact that the provisions of the Political Reform Act apply only to state officials).

13. *See id.* at 3 (identifying the author's motivations for drafting Senate Bill 8).

14. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENT, COMMITTEE ANALYSIS OF SB 8, at 2 (Mar. 16, 2005).

15. CAL. FAIR POLITICAL PRACTICES COMM'N, *supra* note 7.

16. *Id.*

17. CAL. GOV'T CODE §§ 87400-07 (West 2005).

office regarding matters in which the official had participated while in office.<sup>18</sup> Additionally, the Act requires that former members of the Legislature, former elected state officials, and former employees of state administrative agencies do not communicate with the offices of their prior employers for the purpose of influencing any decision or action for a period of one year following their departures from office.<sup>19</sup> The Act expressly confines its application to former state officials and fails to address comparable situations involving former local government officials.<sup>20</sup>

### *B. Taking Initiative, San Francisco Voters Enact Local Restrictions*

Although the Political Reform Act of 1974 neglected to specifically restrict the activities of former local government officials, the city of San Francisco determined that local restrictions were needed to combat emerging corruption in its local government.<sup>21</sup> In 2003, San Francisco voters enacted section 3.234 of the Campaign and Governmental Conduct Code, which imposes restrictions on local government officials that are markedly similar to those imposed upon state officials by the Political Reform Act.<sup>22</sup> This code constrains the conduct in which former local government officials may engage following their employment with the city or county.<sup>23</sup> By enacting a particularly restrictive regulation, San Francisco permanently prohibits representation of any person by a former local official regarding any matter that the former official participated in while in office.<sup>24</sup> The San Francisco statute also proscribes all communications with the former agency that are intended to influence a “government decision” for one full year after the official leaves office.<sup>25</sup>

Following the lead of San Francisco, Los Angeles also enacted its own ordinances restricting the conduct of local government officials.<sup>26</sup> No law prevents a locality from enacting prohibitions on local government official conduct, and before Chapter 680 it was the sole responsibility of the local community to impose such restrictions.<sup>27</sup>

18. *Id.* § 87406.

19. *Id.*

20. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 1-2 (July 5, 2005).

21. *Id.* at 3.

22. *See* S.F., CAL., CAMPAIGN & GOVERNMENTAL CONDUCT CODE § 3.234 (2003) (prohibiting certain actions of former local government employees that might compromise agency impartiality).

23. *Id.*

24. *Id.* § 3.234(a)(1)(A)-(B).

25. *Id.* § 3.234(a)(1)(D).

26. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 3 (July 5, 2005).

27. *Id.*

## III. CHAPTER 680

Chapter 680 serves to sharpen the teeth of the Political Reform Act of 1974 by expanding the scope of the application of its revolving door provisions to include former local government officials.<sup>28</sup> By adding section 87406.3 to the Government Code, Chapter 680 restricts the circumstances under which former local government officials are allowed to appear before or communicate with their former agency in the year subsequent to leaving office.<sup>29</sup> Chapter 680 prohibits any appearance or communication that is calculated to influence an administrative or legal action.<sup>30</sup> As defined in Chapter 680, administrative action means any proposal, drafting, amendment, enactment, or defeat by any local government agency of any non-ministerial matter.<sup>31</sup> Legislative action refers to action on “any ordinance, amendment, resolution, report, nomination or other matter by the legislative body.”<sup>32</sup> Further, Chapter 680 proscribes actions that are intended to influence the “issuance, amendment, awarding, or revocation of any license, grant, permit, or contract.”<sup>33</sup> In addition, Chapter 680 disallows any appearance or communication for the purpose of influencing the sale or purchase of goods or property.<sup>34</sup>

Contained in the class of local officials affected by Chapter 680 are chief administrative county officers, city managers, general or chief administrators of special districts, and local elected officials.<sup>35</sup> For the purposes of Chapter 680, a local government agency is defined as “a county, city, or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.”<sup>36</sup> Chapter 680 contains one limitation in that it does not apply to a former official who is presently a member of a different local government agency.<sup>37</sup>

In an effort to encourage further restraint of former local officials, Chapter 680 specifically allows local government agencies to adopt more restrictive policies regarding appearances of former officials than those required under Government Code section 87406.3.<sup>38</sup> The Fair Political Practices Commission (FPPC) is primarily responsible for the administration and enforcement of the

28. *See id.* at 1 (recognizing that the new law increases the restrictions on former officials).

29. CAL. GOV'T CODE § 87406.3(a) (enacted by Chapter 680).

30. *Id.*

31. *Id.* § 87406.3(d)(1).

32. *Id.* § 87406.3(d)(2).

33. *Id.* § 87406.3(a).

34. *Id.*

35. *Id.*

36. *See id.* § 82041 (West 2005) (enumerated by Chapter 680 as the source of the definition of local government agency).

37. *Id.* § 87406.3(b) (enacted by Chapter 680).

38. *Id.* § 87406.3(c).

Political Reform Act and will be the agency charged with implementing the additions to that Act provided by Chapter 680.<sup>39</sup>

#### IV. ANALYSIS OF CHAPTER 680

The Legislature designed Chapter 680 to facilitate the restoration of the integrity of local governments in California.<sup>40</sup> Following the recent rash of publicized corruption scandals in prominent cities such as Los Angeles, San Diego, and San Francisco, the citizens of this state are understandably disenchanted with some of their elected representatives.<sup>41</sup> Chapter 680 seeks to reaffirm society's confidence in the motivations of government officials by expanding the application of conflict of interest restrictions to local governments.<sup>42</sup> Under prior law, a local government official had the opportunity to wield his influence and exploit his contacts for his own personal gain.<sup>43</sup> Chapter 680 seeks to dispel any misgivings that citizens may have about the honesty of local government officials by restricting them from using their former positions to influence any decisions within the first year after they exit office.<sup>44</sup>

Since Chapter 680 does not restrict the ability of a local government to enact a revolving door policy more stringent than that required under the California Government Code, cities with particularly restrictive policies, such as San Francisco, will not have their policies adversely affected by the new law.<sup>45</sup> In fact, local governments with existing restraints may be able to avail themselves of the enforcement assistance of the FPPC,<sup>46</sup> which is the entity charged with enforcing the provisions of Chapter 680.<sup>47</sup>

However, the costs of administering Chapter 680 are a focus of major concern for opponents of the law.<sup>48</sup> In fact, the strongest opponent throughout the

39. See SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT, AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 8, at 3 (Mar. 16, 2005) (identifying the FPPC as responsible for the enforcement of Chapter 680's restrictions); CAL. FAIR POLITICAL PRACTICES COMM'N, *supra* note 7, at 1 (explaining that the primary responsibility of the FPPC is to impartially and effectively administer the Political Reform Act). The FPPC issues opinions and advice letters, conducts seminars, prescribes forms and enforces the requirements of the Political Reform Act. *Id.*

40. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 3 (July 5, 2005).

41. *Id.*

42. *Id.*

43. See *id.* (explaining the author's purpose to prevent former local officials from receiving compensation for influencing governmental decisions for their own personal gain).

44. *Id.*

45. CAL. GOV'T CODE § 87406.3(c) (enacted by Chapter 680).

46. See ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 2 (July 5, 2005) (noting that this policy will cost the FPPC \$84,000 to enforce in 2005-2006 and \$168,000 in 2006-2007).

47. *Id.*

48. See SENATE RULES COMMITTEE, THIRD READING OF SB 8, at 4 (Mar. 30, 2005) (asserting the FPPC's opposition due to the increased costs it would impose).

legislative process has been the FPPC.<sup>49</sup> The FPPC contends that enforcing the new requirements against former local government officials and employees will require costs that it is unable to bear.<sup>50</sup> By failing to include an annual appropriation to the FPPC for enforcement, Chapter 680 may face significant implementation obstacles.<sup>51</sup>

In the past two years the FPPC has suffered budget reductions in amounts totaling nearly \$600,000.<sup>52</sup> It was straining its resources to enforce the restrictions of the Political Reform Act prior to the enactment of Chapter 680 and will now be further burdened.<sup>53</sup> Since the FPPC has not been enthusiastic about Chapter 680, it is unlikely that much energy will accompany its enforcement.<sup>54</sup> Thus, the extension of revolving door prohibitions to the local level may have little effect on the state of corruption in those areas.<sup>55</sup> Responsibility for enforcement of the restrictions will likely fall on the shoulders of local law enforcement since the FPPC has expressed its inability and unwillingness to support Chapter 680.<sup>56</sup>

Additionally, there is some question whether most local governments are in need of such restrictions.<sup>57</sup> In a small rural locality, restrictions such as these may actually hinder the ability of the government to function.<sup>58</sup> For instance, in a small town with limited government involvement, barring former officials from continuing their involvement for one year may significantly reduce the interests that are represented before the governing body of the town.<sup>59</sup> Also, small localities are often less likely to fall victim to patronage politics since there is less revenue available to the population.<sup>60</sup> There is a pervasive question as to whether this type of law, with such a sweeping effect, is even necessary.<sup>61</sup>

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49. *Id.*

50. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 4 (July 5, 2005).

51. See SENATE RULES COMMITTEE, THIRD READING OF SB 8, at 4 (May 27, 2005) (implying that enforcement of the new law's provisions may be compromised because of the FPPC's dissatisfaction with the bill).

52. *Id.*

53. SENATE APPROPRIATIONS COMMITTEE, FISCAL SUMMARY OF SB 8, at 1 (Apr. 18, 2005).

54. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 8, at 2 (Mar. 16, 2005).

55. *Id.* at 3.

56. See ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 4 (July 5, 2005) (reiterating the position of the FPPC that it will be unable to effectively enforce the provisions of Chapter 680 without an increased annual appropriation).

57. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 8, at 2 (Mar. 16, 2005).

58. *Id.*

59. See *id.* (implying that the restriction could handicap the governments of particularly small localities).

60. *Id.*

61. *Id.* at 1-2 (identifying that opponents are wary that while large local jurisdictions and agencies likely face the same corruption problems that are present at the state level, smaller locales probably do not have significant corruption problems and may not be in need of the revolving door restrictions provided by Chapter 680).

Also accompanying Chapter 680 is the concern that, depending upon the entity that is doing the enforcing, the officials of larger cities with pre-existing restrictions will be subject to varying revolving door prohibitions.<sup>62</sup> For example, a former San Francisco official who communicates with his former agency regarding a project that he participated in while in office would be in violation of the city ordinance, but his activities would not be specifically prohibited under section 87406.3 of the Government Code.<sup>63</sup> This concern is addressed through Chapter 680, however, as it expressly allows the enactment of more restrictive policies by local governments.<sup>64</sup> Specifically, section 87406.3 of the Government Code allows a local government agency to adopt its own restrictions so long as they are more restrictive than those imposed under Chapter 680.<sup>65</sup> Thus, the more restrictive of the two policies will be the one enforced.<sup>66</sup>

Posing an additional problem is the fact that Chapter 680 contains an exception to the imposed restrictions for the former local official who now represents a different local governmental agency.<sup>67</sup> Thus, there is the potential that an official, like Julie Lee, could be allowed to guide governmental decisions for her personal benefit so long as she continues to hold some sort of local government office.<sup>68</sup> Conflict of interest provisions that restrict the acceptable activities of officials while in the Political Reform Act of 1974 serve to eliminate these types of activities at the state level.<sup>69</sup> However, there are no conflict of interest restrictions imposed by Chapter 680 on presently serving government officials.<sup>70</sup>

Still, Chapter 680 does address the problem of local government corruption, which can severely disenchant citizens.<sup>71</sup> The law brings the issue of local political corruption to the forefront and illustrates that this is a problem that the state is willing to assist local governments in addressing.<sup>72</sup> Chapter 680 provides a mechanism through which local corruption and patronage politics can be

62. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 3 (July 5, 2005).

63. S.F., CAL., CAMPAIGN & GOVERNMENTAL CONDUCT CODE § 3.234 (2003); CAL. GOV'T CODE § 87406.3 (enacted by Chapter 680).

64. CAL. GOV'T CODE § 87406.3(c) (enacted by Chapter 680).

65. *Id.*

66. *Id.*

67. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 8, at 1 (Mar. 16, 2005).

68. *See id.* (explaining that the restrictions do not apply to those who are appearing as representatives of another government agency or official).

69. CAL. FAIR POLITICAL PRACTICES COMM'N, *supra* note 7.

70. SENATE COMMITTEE ON ELECTIONS, REAPPORTIONMENT AND CONSTITUTIONAL AMENDMENTS, COMMITTEE ANALYSIS OF SB 8, at 1 (Mar. 16, 2005).

71. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 3 (July 5, 2005).

72. *See* CAL. GOV'T CODE § 87406.3 (enacted by Chapter 680) (manifesting the concern of state lawmakers regarding local political corruption and their efforts to combat such activities).

addressed.<sup>73</sup> If nothing else, the provisions of Chapter 680 provide guidelines to local lawmakers who identify local corruption as an issue that needs to be addressed in their community.<sup>74</sup> Chapter 680 is the foundation upon which sweeping state-wide control of the conduct of local government officials can be built.<sup>75</sup>

## V. CONCLUSION

Chapter 680 is intended to address the problem of local government corruption and patronage politics.<sup>76</sup> However, the successful implementation of the restrictions in a given locality is likely to hinge upon the perceived need for such restrictions by the members of that community.<sup>77</sup> Since the FPPC is not likely to provide vigorous enforcement of the provisions of Chapter 680, local law enforcement agencies will be charged with restraining former local officials' conduct.<sup>78</sup>

In the wake of Chapter 680, restrictions imposed upon local government officials will likely be handled just as it was in San Francisco: by the voters of that locality.<sup>79</sup> When the constituents of a city become frustrated enough to enact a local ordinance, then the provisions proposed by Chapter 680 will be effectuated in that area.<sup>80</sup> Cities and towns that need restrictions will have to proactively pursue local laws to enforce them, while cities and towns that do not are unlikely to have the restrictions aggressively imposed by the FPPC and, thus, will be unaffected.<sup>81</sup>

Despite its enforcement pitfalls, Chapter 680 does serve to inform Californians that local government corruption exists, is a problem that is being addressed by the state, and can be significantly reduced through restrictions upon the conduct of officials.<sup>82</sup> Chapter 680 provides for state-wide restrictions on

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73. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 3 (July 5, 2005).

74. *Id.*

75. *Id.*

76. *See id.* (identifying the author's motivation and corruption that has plagued her district, including San Bernardino County).

77. *See id.* at 4 (communicating the FPPC's inability to enforce Chapter 680, which will charge local communities with its enforcement).

78. *Id.*

79. *See S.F., CAL., CAMPAIGN & GOVERNMENTAL CONDUCT CODE* § 3.234 (2003) (manifesting San Francisco voters' desire to impose restrictions on local government officials).

80. *See id.* (providing an example of a city that took the initiative to enact its own restrictions).

81. *See ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8*, at 4 (July 5, 2005) (conveying the FPPC position that they will be unable to enforce restrictions without an annual appropriation, which Senate Bill 8 fails to grant).

82. *See SENATE RULES COMMITTEE, THIRD READING OF SB 8*, at 3 (May 27, 2005) (outlining arguments in favor of Senate Bill 8, which assert that the legislation takes a common sense approach to alleviating local corruption and restoring the faith of the people in their government).

local government conduct and, should the need for the strict enforcement of such a policy ever emerge, the FPPC is only an annual \$168,000<sup>83</sup> appropriation away from climbing on board.<sup>84</sup>

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83. SENATE APPROPRIATIONS COMMITTEE, FISCAL SUMMARY OF SB 8, at 1 (Apr. 18, 2005) (outlining Chapter 680's fiscal impact on the FPPC).

84. ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING, COMMITTEE ANALYSIS OF SB 8, at 4 (July 5, 2005).

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