

# State of California



## Fair Political Practices Commission

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322-5901

•• Enforcement  
322-6441

December 24, 1984

Fred Lowell  
Pillsbury, Madison & Sutro  
225 Bush Street  
San Francisco, CA 94104

Re: Your Request for Advice  
Our File No. A-84-291

Dear Mr. Lowell:

You have written requesting confirmation of earlier advice contained in our letter of July 28, 1978, to Ms. Betty-Jane Kirwan (No. 78-214). In that letter, we concluded that the South Coast Air Quality Management District (SCAQMD) was not a "state agency" for purposes of the lobbying provisions of the Political Reform Act.<sup>1/</sup> You have also asked whether our advice would be the same for all other air quality management districts and whether the same would apply to the Regional Water Quality Control Boards.

### CONCLUSION

Our advice as to the SCAMQD remains unchanged. We also advise that other local air quality management districts are also not state agencies for the purposes of the Act's lobbying provisions. However, our advice with respect to the Regional Water Quality Control Boards (water boards) is that they are state agencies for purposes of the Act's lobbying provisions.

### ANALYSIS

The Act requires lobbyists and lobbyist employers to maintain records and file reports relative to certain activities undertaken by lobbyists. A lobbyist is someone who attempts to

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<sup>1/</sup> Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise specified.

influence legislative or administrative action. Section 82049. Legislative action is defined in Section 82037 as being limited to actions involving state legislation. Section 82002 defines administrative action as involving only actions by state agencies, including those actions governed by the Administrative Procedure Act. The term "state agency" is defined very broadly in Section 82049. For purposes of determining whether a public agency is either state or local for purposes of the lobbying provisions of the Act, the Commission has adopted a regulation, 2 Cal. Adm. Code Section 18249.

An agency is a state agency within the provisions of Government Code Sections 82004 and 86100-86300 only if all the following criteria are met:

(a) The agency is authorized by statute, executive order or the California Constitution.

(b) At least one voting member is an elected state officer or is appointed by an elected state officer or an agency official or a state agency.

(c) The agency is financed in part by any state funds or is subject to appropriation in the state budget.

(d) An area larger than one county is included in its jurisdiction.

Applying the tests set forth in the regulation, we find that the air quality districts do not meet the criterion set forth in subdivision (b), with the lone exception of SCAQMD. Health and Safety Code Sections 40420 and 40421 govern the SCAQMD, which shall include three public members appointed by elected state officers. See, Health and Safety Code Section 40420(i). Health and Safety Code Sections 40220.5, 40221 and 40221.5 govern the Bay Area Air Quality Management District in this regard and dictate only local appointees. All other air quality management districts are locally appointed and, with few exceptions, have single county jurisdictions, which means they also do not meet the criterion of regulation 18249(d).

Consequently, the only air quality district which meets all four tests set forth in the regulation is the SCAQMD. However, because it otherwise functions in the same manner as the other agencies and given the "only if" language contained in the regulation, we conclude that our prior advice as to the SCAQMD

is appropriate. The correctness of this advice is bolstered by the court's decision in People v. A-1 Roofing Service (1978) 87 Cal. App. 3d Supp. 1. In that case, the court specifically considered whether the SCAQMD was a "state agency" and thereby was required to adopt its rules and regulations in accordance with the Administrative Procedure Act. The court stated as follows:

. . . Defendant urges that the SCAQMD regulations are invalid primarily by arguing that the SCAQMD is a state agency. The result, defendant says, is that the rules and regulations had to be filed with the Secretary of State and published in the Administrative Code in order to be valid and to give notice. (Gov. Code Sections 11380, 11409, 11422.) While regulations of state agencies must follow this procedural route, the short answer to defendant's contention that the wrong statutory procedure was followed is that, as noted above, the SCAQMD is expressly provided to be a local agency. (Section 40412.) That section expressly refers to the SCAQMD as "the sole and exclusive local agency within the South Coast Air Basin with the responsibility for comprehensive air pollution control...."

Id., at 11.

Turning to the Regional Water Quality Control Boards, the analysis is different. The regional water boards are part of the State Water Resources Control Board (State Board). They are staffed by State Board employees. Water Code Section 13201. The members of the regional water boards are appointed by the Governor, subject to Senate confirmation. Id. A regional water board's water quality control plan is not effective until approved by the State Board. Water Code Section 13245. Furthermore, actions by the water boards may be appealed to the State Board. Water Code Sections 13320 and 13321. The regional water boards may utilize the services of the Attorney General. Water Code Section 13262. It is obvious that, in addition to meeting the tests set forth in the regulation (18249), the regional water quality control boards are, indeed, state agencies.

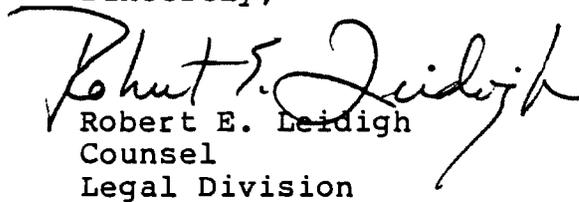
The last remaining issue is whether these boards are "state agencies" for the purposes of lobbying provisions of the Act. Most of the work of the regional water boards involves actions which are not "quasi-legislative" administrative actions. See, 2 Cal. Adm. Code Section 18202. However, the adoption of the

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"basin plan" (water quality control plan) is a quasi-legislative action. These plans are not subject to the Administrative Procedure Act because they are subject to their own statutory notice and procedure requirements as are other actions by the State Board. Water Code Sections 13147 and 13244. Therefore, as to those actions and attempts to influence them, the lobbying provisions of the Act would apply.

If you have any questions regarding the foregoing advice, I may be reached at (916) 322-5901.

Sincerely,

  
Robert E. Leidigh  
Counsel  
Legal Division

REL:plh

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November 21, 1984

Ms. Barbara Milman  
General Counsel  
Fair Political Practices Commission  
P. O. Box 807  
1100 K Street  
Sacramento, CA 95814

Dear Barbara:

This is a request for written advice pursuant to Government Code section 83114(b).

This firm files quarterly reports as a "\$2,500 filer" pursuant to the lobbying disclosure provision of the Political Reform Act of 1974 ("the Act"). Moreover, this firm advises various clients on compliance with the lobbying disclosure provisions of the Act.

Government Code section 82049 and 2 Cal. Administrative Code section 18249 define the term "state agency" by reference to certain criteria designed to demonstrate whether or not an agency is indeed a creature of the State. If an agency does not qualify as a "state agency," it is not subject to the lobbying disclosure provisions of the Act.

By letter dated July 28, 1978 (copy attached), the FPPC's Conflict of Interest Division advised Ms. Betty-Jane Kirwan that the South Coast Air Quality Management District (SCAQMD) is not a "state agency" for the purposes of the lobbying disclosure provisions of the Act even though it satisfies the criteria set forth in the Commission's regulation. The Commission concluded that certain

overriding factors were present that led to the conclusion that the SCAQMD should be treated as "local" in nature and not as a state agency.

I am writing to ask the following:

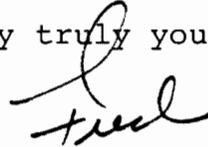
1. Is it still the Commission's opinion that the SCAQMD is not a state agency for the purposes of the lobbying disclosure provisions of the Act?

2. Is the same conclusion applicable to all other air quality management districts in the state?

3. Is the same analysis applicable to Regional Water Quality Control Boards?

Thank you for your attention on this matter.

Very truly yours,



Frederick K. Lowell

Attach.

cc: The Honorable Dan Stanford  
Ms. Jeanne Pritchard



# Fair Political Practices Commission

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Technical Assistance/Administration  
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Conflict of Interest  
322-6444

July 28, 1978

Ms. Betty-Jane Kirwan  
McCutchen, Black, Verleger & Shea  
Thirtieth Floor  
3435 Wilshire Boulevard  
Los Angeles, CA 90010

Dear Ms. Kirwan:

Thank you for your letter of June 27, 1978 in which you asked our office to confirm prior informal advice given by the Commission's staff with respect to the application of the Political Reform Act's definition of State Agency to the South Coast Air Quality Management District (SCAQMD).

Government Code Section 82049 defines state agency to

...every state office, department, division, bureau, board and commission, and the Legislature, but does not include the courts or any agency in the judicial branch of government.

The Commission has provided by regulation that,

An agency is a state agency within the provisions of Government Code Section 82049 only if all the following criteria are met:

- (a) The agency is authorized by statute, executive order or the California constitution.
- (b) At least one voting member is an elected state officer or is appointed by an elected state officer or an agency official or a state agency.
- (c) The agency is financed in part by any state funds or is subject to appropriation in the state budget.

*SCAQMD - 1 minute*

*17 2.5 [unclear]  
75 [unclear]*

(d) An area larger than one county is included in its jurisdiction.

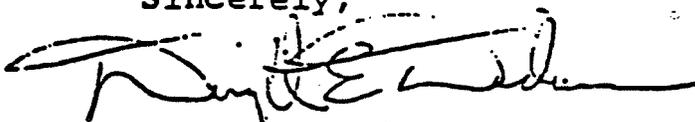
2 Cal. Adm. Code Section 18249

Although SCQAMD satisfies the criteria set forth in the Commission's regulation, certain overriding factors are present which lead to a conclusion by the Commission's staff, that SCAQMD is local in nature and, therefore, is not a state agency. First, most air quality or air pollution districts are limited in their jurisdiction to one county. Second, over 90% of the finances for such districts comes from local funds. Third, the California Air Resources Board (CARB) is the true State agency in the air pollution area. The CARB adopts regulations which supersede all local regulations and bind all local districts including the SCQAMD. Moreover, all variances and permits granted by a local district must be approved by the CARB.

For these reasons, it is the staff's conclusion that SCAQMD is not a state agency. Thus, your client Western Oil and Gas Association need not report expenditures that are made for the purposes of influencing administrative action of the District's Board.

I hope that this information has been helpful. If we may be of further assistance regarding this matter, please do not hesitate to contact our office.

Sincerely,



Dwight E. Dickerson  
Legal Counsel  
Conflicts of Interest Division

DED:nw