

# State of California



## Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement  
(916) 322-5662 322-5660 322-5901 322-6441

August 6, 1985

Suzanne B. Gifford  
Assistant General Counsel  
Southern California Rapid Transit  
District  
425 South Main Street  
Los Angeles, CA 90013

Re: Your Request for Advice  
Our File No. A-85-135

Dear Ms. Gifford:

This letter is sent in response to your request for advice on behalf of Southern California Rapid Transit District ("District") concerning the financial disclosure obligations of District Consultants under the Political Reform Act.<sup>1/</sup> More specifically, you asked whether four attorneys who are retained as District lobbyists should file financial disclosure statements as consultants under the District's Conflict of Interest Code. Two of these attorneys have not submitted Statements of Economic Interests.

### DISCUSSION

In its conflict of interest code, each agency must designate those positions that involve the making of, or participation in, decisions which may foreseeably affect any financial interest. Section 87302. Both the definitions of "designated employee" and "public official" in the Act include any consultants to an agency who make or participate in the agency's decisions.

A "consultant," within the meaning of the Act, includes "any natural person who provides, under contract, information,

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<sup>1/</sup> The Political Reform Act is contained in Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise noted.

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advice, recommendation or counsel to a state or local government agency..." 2 Cal. Adm. Code Section 18702(a)(2). This term does not include, however, a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

2 Cal. Adm. Code Section  
18700(a)(2)(A) and (B)

Under the District's contracts with the lobbyists (copies provided with your letter), the lobbyists agree to engage in coordination and lobbying efforts on behalf of the District at the federal level involving appropriation and allocation of funding under the Urban Mass Transportation Act. As a part of their duties, the lobbyists are required to:

(1) To communicate directly with persons in various agencies within the U.S. Department of Transportation regarding the current and future policy on appropriation and allocation of funding under the Urban Mass Transportation Act, as amended.

(2) To communicate directly with staff and elected representatives of the U.S. Congress regarding the current and future policy on appropriation and allocation of funding under the Urban Mass Transportation Act, as amended.

(3) To identify critical information to the District and to incorporate it into written materials for distribution in Washington and locally.

(4) To assist in the utilization and coordination of efforts by other major transit properties, the private sector, and specific organizations and groups having an interest in the appropriation and allocation of funding under the Urban Mass Transportation Act, as amended.

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(5) To assist in the development and implementation of policy favorable to the District and other major properties in regard to federal funding.

(6) To meet periodically with representatives of the District and prepare periodic reports on the work performed in connection with the above tasks.

When an attorney is hired under a contract to provide general advice and assistance to an agency on an on-going basis, it is our view that the attorney is a consultant within the meaning of the Act. The lawyer/lobbyists retained by the District have agreed to provide advice and assistance to the District and thus are a part of the District's decision-making process in the area of federal transit funding.<sup>2/</sup> For these reasons, when the lobbyists provide services to the District, they are consultants within the meaning of the Act.

However, whether disclosure should be required pursuant to the District's Conflict of Interest Code depends on whether any private financial interests may be affected by the decisions in which the lobbyists participate. If all of the District decisions in which they are involved relate to federal funding, then the decisions do not affect private financial interests. If this is the case, disclosure should not be required. If they participate in other decisions, you should determine what disclosure is appropriate based on the types of private financial interests which could be affected by those decisions.

In summary, the lobbyists are public officials/consultants who are covered by the financial disclosure and disqualification provisions of the Political Reform Act. However, their financial disclosure should be limited to the types of private financial interests that can be affected by the District decisions in which they participate.

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<sup>2/</sup> This can be contrasted with an attorney who is retained to perform legal services for a specific matter (e.g., a particular piece of litigation). This attorney would fall within the exemption in Section 18700 because, under such circumstances, the attorney uses his own judgment and expertise to render professional services, and his decisions are not subject to day-to-day review or direction by the agency.

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Please feel free to contact me if I can be of further assistance.

Sincerely,

*Diane Maura Fishburn*  
*dfb*

Diane Maura Fishburn  
Counsel  
Legal Division

DMF:nwm



**Suzanne B. Gifford**  
Assistant General Counsel

June 10, 1985

Ms. Diane Fishburn  
Staff Counsel  
Fair Political Practices Commission  
Box 807  
Sacramento, California 95804

Dear Ms. Fishburn:

Re: Request for Opinion

We have previously, on behalf of the District, requested your advice and opinion as to whether certain attorneys, which is a designated position in the District's Conflict of Interest Code, are required to file Statements of Economic Interest.

We now ask your advice as to whether District employed lobbyists (which category is not included in the list of designated positions but who nevertheless were requested to submit statements) are subject to the disclosure requirements of the District's Conflict of Interest Code. A copy of the standard lobbyist contract is enclosed for your review.

Form 730 has been mailed to four lobbyists, two of whom have completed and returned it to date.

Your guidance as to whether lobbyists should be included in the category of "Consultant" as defined in Title 2 of the California Administrative Code would be greatly appreciated.

Very truly yours,

Suzanne B. Gifford

Enclosure  
cc: N. Bernard