California
Fair Political
Practices Commission

November 6, 1985

Jack Germain
John Qatsha
CQ: Associates
3353 Bradshaw Road, Suite 225
Sacramento, CA 95827

Re: Your Joint Request for Advice
Our File No. A-85-220

Gentlemen:

You have jointly written requesting formal written advice with respect to any possible duties or obligations which you might have under the Political Reform Act (the "Act").[1/] The facts upon which your advice request is based have been gleaned from your letter and our subsequent telephone conversation; they are as follows.

FACTS

(1) The two principals of our governmental relations firm are former exempt employees of the State Department of Social Services (Chief Deputy Director and Chief Public Information Officer). Both resigned from state service effective July 31 of this year, coincidentally and for unrelated personal reasons. The decision to form the private sector partnership came subsequent to our respective resignation notices.

(2) In mid-September, the firm entered into a professional services contract with a nationally-known, Arizona based company which had for the past five or six years been unsuccessful in its efforts to achieve licensure in California under this state's Community Care Licensing Act. That contract calls for us to: (a) conduct a comprehensive study of

---

1/ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

428 J Street, Suite 800 • P.O. Box 807 • Sacramento CA 95804-0807 • (916) 322-5660

all official public-record responses by the department of Social Services and other public agencies to those efforts, and all statutes, regulations and policies pertinent to the company's application for licensure; (b) do an indepth analysis of the total record and identify those key issues contributing most significantly to the company's failure to achieve licensure and (c) make appropriate findings and recommendations to the company for the purpose of aiding them in their future decisions relative to further efforts toward licensure in California.

(3) Our final report to the client is due at a time certain, within 90 days, for a fixed sum. The contract does not call for any activities on our part that would be aimed at influencing an administrative decision on a specific application, since: (1) a decision whether or not to file a new licensing application will not be made until after the report, and (2) the intent of the report is to influence company decisions, not the decisions of the licensing authority.

(4) The study is being conducted and the report prepared solely on the basis of documentations available from the public record. While our efforts obviously will benefit from our familiarity with the licensing process and the state officials responsible for it, we have not sought nor will our study require access to any confidential or otherwise privileged data or information in the custody of the Department of Social Services.

QUESTIONS

You have asked the following two questions:

A. Does the activity described constitute grounds for requiring registration as lobbyists under the Political Reform Act?

B. Is the study contract as described a prohibited activity under the state's applicable "conflict of interest" law?

CONCLUSION

The activity described does not constitute grounds for requiring registration as lobbyists under the Act. A copy of

the Commission's Lobbyist Manual is enclosed for your future reference. Please be advised that it will soon be revised to reflect recent changes in the law regarding lobbyist reporting; however, these changes do not affect when someone is required to register as a lobbyist.

The specific activities which you have outlined do not create problems with the conflict of interest provisions of the Act; however, you should be aware of the restrictions placed upon former state employees by Section 87400, et seq., as explained below.

ANALYSIS

Lobbyist Registration

The Act defines the term lobbyist as follows:

> "Lobbyist" means any individual who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he or she receives consideration is for the purpose of influencing legislative or administrative action. No individual is a lobbyist by reason of activities described in Section 86300.

Section 82039.

The Commission has, by regulation, further defined when it is that a person qualifies as a lobbyist.

> (a) A lobbyist is any person who, for compensation, engages in direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action, and also meets the requirements of either subsection (b) or subsection (c) of this section.
>
> (b) The person receives or becomes entitled to receive at least $2,000 in compensation in any calendar month for influencing legislative or administrative action. Compensation received by a

full time employee engaged primarily to perform services other than influencing legislative or administrative action, or for administrative testimony, shall not be included in computing the amount of compensation in this subsection.

(c) The person receives or becomes entitled to receive any amount of compensation for engaging in direct communication, other than administrative testimony, with qualifying officials for the purpose of influencing legislative or administrative action on at least 25 separate occasions in any two consecutive calendar months.

* * *

2 Cal. Adm. Code Section 18239.

You have stated that you are merely gathering factual information from the public record and are not in any way attempting to influence administrative action by your former agency. Hence, your actions do not cause you to be lobbyists, required to register under the Act's provisions contained in Chapter 6 (Sections 86100, et seq.).

Revolving Door

You were both, until recently, state employees. As former state employees, you are subject to the provisions of Sections 87400, et seq. Generally, those sections provide that a former state employee may not represent nor assist, for compensation, another party to a proceeding involving the state, where that employee participated in the same proceeding while in state service.[2/] For Mr. Qatsha, who was the Departments's Chief Deputy Director, this may well involve numerous proceedings and parties, and he should keep these provisions in mind as to other activities. However, in the instant case, you have advised me that the proceeding has been entirely completed and your efforts on behalf of the party involve only gathering of information so that the party can decide whether or not it wishes to initiate an entirely new proceeding. If your client ultimately decides to do that and if there is any question

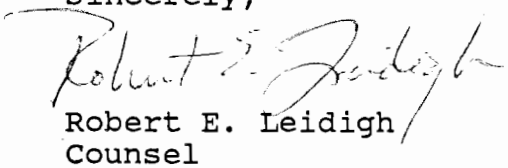
---

2/ Enclosed is a copy of the Political Reform Act as amended through January 1, 1985. The provisions of Sections 87400-87405 are set forth in their entirety therein.

whatsoever as to whether it is an entirely separate and distinct proceeding, please do not hesitate to contact this office for further advice.

Should you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure

GQ:Associates
Governmental Relations

3353 BRADSHAW ROAD, SUITE 225 · SACRAMENTO, CA 95827 · (916) 361-0611

F P P C
OCT 24 8 26 AM '85

October 21, 1985
Ms Barbara Milman, General Counsel
Fair Political Practices Commision
P.O.Box 807
Sacramento, Ca. 95804

Dear Counsellor:

Pursuant to directions received in telephone conversation with your office earlier this month, we herewith request at your earliest convenience a Staff Advice Letter relative to the following circumstance:

(1) The two principals of our governmental relations firm are former exempt employees of the State Department of Social Services (Chief Deputy Director and Chief Public Information Officer). Both resigned from state service effective July 31 of this year, coincidentally and for unrelated personal reasons. The decision to form the private sector partnership came subsequent to our respective resignation notices.

(2) In mid-September, the firm entered into a professional services contract with a nationally-known, Arizona based company which had for the past five or six years been unsuccessful in its efforts to achieve licensure in California under this state's Community Care Licensing Act. That contract calls for us to : (a) conduct a comprehensive study of all official public-record responses by the Department of Social Services and other public agencies to those efforts, and all statures, regulations and policies pertinent to the conpany's application for licensure; (b) do a indepth analysis of the total record and identify those key issues contributing most significantly to the company's failure to achieve licensure and (c) make appropriate findings and recommendations to the company for the purpose of aiding them in their future decisions relative to further efforts toward licensure in California.

(3) Our final report to the client is due at a time certain, within 90 days, for a fixed sum. The contract does not call for any activities on our part that would be aimed at influencing an administrative decision on a specific application, since: (1) a decision whether or not to file a new licensing application will not me made until after the report, and (2) the intent of the report is to influence company decisions, not the decisions of the licensing authority.

(4) The study is being conducted and the report prepared solely on the basis of documentations available from the public record. While our efforts obviously will benefit from our familiarity with the licensing process and the state officials responsible for it, we have not sought nor will our study require access to any confidential or otherwise privileged data or information in the custody of the Department of Social Services.

The factual situation outlined above does not, in our opinion, constitute either a conflict of interest or qualifying conditions for registration as lobbyists. However, the possibility that we may be out of compliance on both counts has been raised by others in a manner that has become detrimental to our professional and economic interests. We therefore seek your assistance in gaining a clearer definition of our status under the law on the following questions:

A. Is the study contract as described a prohibited activity under the state's applicable "conflict of interest" law?

B. Does the activity described constitute grounds for requiring registration as lobbyists under the Fair Political Practices Act?

We would appreciate the issuance of a Staff Advice Letter on these two questions at your earliest convenience. Please contact us immediately if further information is necessary to render such an advisory opinion.

Respectfully,

Jack Germain John Qatsha

JG/JQ:slr
enclosure

GQ:Associates
Governmental Relations

3353 BRADSHAW ROAD, SUITE 225 · SACRAMENTO, CA 95827 · (916) 361-0611

OCT 29 8 27 AM '85

October 21, 1985

Ms. Barbara Milman, General Counsel
Fair Political Practices Commision
P.O. Box 807
Sacramento, Ca. 95804

Dear Counsellor:

Pursuant to directions received in telephone conversation with your office earlier this month, we herewith request at your earliest convenience a Staff Advice Letter relative to the following circumstance:

(1) The two principals of our governmental relations firm are former exempt employees of the State Department of Social Services (Chief Deputy Director and Chief Public Information Officer). Both resigned from state service effective July 31 of this year, coincidentally and for unrelated personal reasons. The decision to form the private sector partnership came subsequent to our respective resignation notices.

(2) In mid-September, the firm entered into a professional services contract with a nationally-known, Arizona based company which had for the past five or six years been unsuccessful in its efforts to achieve licensure in California under this state's Community Care Licensing Act. That contract calls for us to : (a) conduct a comprehensive study of all official public-record responses by the Department of Social Services and other public agencies to those efforts, and all statutes, regulations and policies pertinent to the company's application for licensure; (b) do an indepth analysis of the total record and identify those key issues contributing most significantly to the company's failure to achieve licensure and (c) make appropriate findings and recommendations to the company for the purpose of aiding them in their future decisions relative to further efforts toward licensure in California.

(3) Our final report to the client is due at a time certain, within 90 days, for a fixed sum. The contract does not call for any activities on our part that would be aimed at influencing an administrative decision on a specific application, since: (1) a decision whether or not to file a new licensing application will not me made until after the report, and (2) the intent of the report is to influence company decisions, not the decisions of the licensing authority.

(4) The study is being conducted and the report prepared solely on the basis of documentations available from the public record. While our efforts obviously will benefit from our familiarity with the licensing process and the state officials responsible for it, we have not sought nor will our study require access to any confidential or otherwise privileged data or information in the custody of the Department of Social Services.

The factual situation outlined above does not, in our opinion, constitute either a conflict of interest or qualifying conditions for registration as lobbyists. However, the possibility that we may be out of compliance on both counts has been raised by others in a manner that has become detrimental to our professional and economic interests. We therefore seek your assistance in gaining a clearer definition of our status under the law on the following questions:

A. Is the study contract as described a prohibited activity under the state's applicable "conflict of interest" law?

B. Does the activity described constitute grounds for requiring registration as lobbyists under the Fair Political Practices Act?

We would appreciate the issuance of a Staff Advice Letter on these two questions at your earliest convenience. Please contact us immediately if further information is necessary to render such an advisory opinion.

Respectfully,

Jack Germain John Qatsha

JG/JQ:slr
enclosure