

Jonathan T. Smith
March 18, 1986
Page 2

which will allow for comment and input by all interested parties who may be affected by the Commission's interpretation.

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

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: Joseph I. Kelley, PG&E



California Fair Political Practices Commission

February 11, 1986

Jonathan T. Smith
Staff Counsel
San Francisco Bay Conservation
and Development Commission
Thirty Van Ness Avenue, Suite 2011
San Francisco, CA 94102-6080

Re: Your Request for Formal
Written Advice
Our File No. A-86-040

Dear Mr. Smith:

I have reviewed your letter requesting Formal Written Advice on the following subject:

Applicability of AB 1040 to PG&E Employees'
State/Local Good Government Fund

It appears that the request is really one from PG&E. However, while you did send a copy of your letter to PG&E, this agency would ask that they join in your request for this advice, particularly given that the facts may well be determinative of the advice (as your letter suggests) and they are the ultimate source of the facts.

Upon receipt of written confirmation that PG&E joins in your request and the name, address and phone number of a contact person at PG&E, I shall proceed with the preparation of a response. Until that time I shall hold it in abeyance. Should you have any questions regarding our procedures, I may be reached at (916) 322-5901.

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Robert E. Leidigh
Counsel
Legal Division

REL:plh



California Fair Political Practices Commission

February 3, 1986

Jonathan T. Smith
Staff Counsel
San Francisco Bay Conservation
and Development Commission
Thirty Van Ness Avenue, Suite 2011
San Francisco, CA 94102-6080

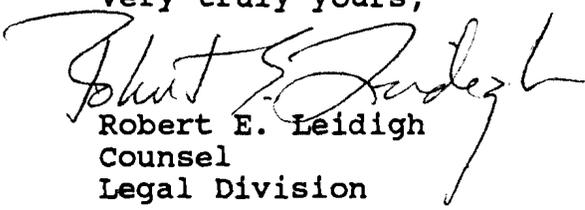
Re: 86-040

Dear Mr. Smith:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

THIRTY VAN NESS AVENUE, SUITE 2011
SAN FRANCISCO, CA 94102-6080
PHONE: (415) 557-3686



January 29, 1986

Ms Barbara A. Milman
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

SUBJECT: Applicability of AB 1040 to PG&E Employees' State/Local
Good Government Fund

Dear Ms Milman:

Recently, the Pacific Gas and Electric Company (PG&E) requested our advice concerning whether AB 1040 requires PG&E to disclose when the PG&E Employees' State/Local Good Government Fund ("the Fund") has made a contribution to one of our Commissioners. We asked for informal advice from your staff on this matter and received a copy of an informal advice letter your office had sent to Frederick K. Lowell on February 7, 1983 (Your File No. A-83-012). In that letter, you had advised that the FPPC would probably not require disclosure and disqualification under AB 1040 (California Government Code Section 84308) for contributions made to government officials by a political action committee whose membership included a company now seeking a permit from such government officials. However, your letter also cautioned that the facts of a particular situation might change that conclusion. Because of the factual differences between the prior request from Mr. Lowell and PG&E's request to us for advice, we now request pursuant to Government Code Section 83114(b) and 2 California Administrative Code Section 18329 that you provide us with formal written advice on the applicability of AB 1040 to campaign contributions made to Bay Commission members by the Fund.

Before I provide our staff analysis of the problem, let me provide some background information on the Bay Commission and on the Fund. The Bay Commission has permit authority over filling, extraction of materials, and any substantial change in use that occurs with San Francisco Bay, a 100-foot shoreline band that surrounds the Bay, salt ponds, managed wetlands, and certain enumerated waterways that empty into the Bay. In addition, under federal law the Bay Commission must concur that activities for which a federal permit is sought and which would affect land or water uses in the Bay Commission's jurisdiction are consistent with the Commission's authorities before the federal agency can issue a

Ms Barbara A. Milman
January 29, 1986
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permit. The Commission is composed of 27 members who represent local governments, the public, the Legislature, and various state and federal agencies. Because PG&E has numerous facilities within the Bay Commission's jurisdiction, the company applies for Bay Commission permits.

I have enclosed a one-page description of the fund that PG&E provided to us. PG&E has also informed us that none of its officers or employees who act as directors of the Fund or provide support or administrative services for the Fund is in any way involved in the summittal of permit applications to the Commission. I understand that the Fund has registered with the FPPC so you have more information if you need it for your analysis.

AB 1040 requires the disclosure of all campaign contributions over \$250 during the past 12 months by any party to a permit proceeding or its agent, prohibits the acceptance of such contributions by Commission members during the pendency of a permit application and three months thereafter, and prohibits any Commission member who has received such a contribution from participating in the permit proceedings. Thus, the question is whether the Fund should be considered to be an agent of PG&E.

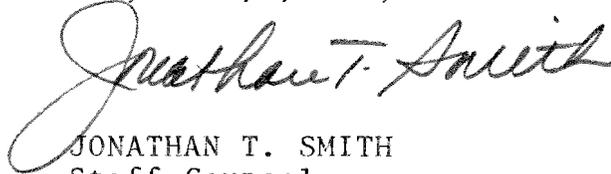
2 California Administrative Code Section 18438.3(a) defines the term "agent" to include a person only if he or she represents the permit applicant. Your previous advice letter to Mr. Lowell stated that a person must appear before an agency, directly communicate with a member of the agency, or otherwise engage in conduct that would constitute direct communication with agency member before that person would be considered to be an agent. Because the Fund does not appear before the Bay Commission or communicate with any member of the Commission in regard to PG and E permit applications, the Fund does not seem to be an agent of PG&E within the meaning of AB 1040. However, the facts remain that four PG&E officers sit on a seven-member management committee that administers the Fund and PG&E provides administrative and support services to the Fund.

In conclusion, it is not clear whether AB 1040 requires PG&E to disclose contributions made by the Fund to Bay Commission members when PG&E applies for a Bay Commission permit, requires any Commissioners who have received such contributions to disclose such receipt, and prohibits any such Commissioners from participating in PG&E's permit applications. A literal application of the statutory language and applicable regulations leads to the conclusion that AB 1040 does not require such disclosure and prohibition, but the spirit of AB 1040 seems contrary to this conclusion. Thus, staff hopes that you will be able to provide us with advice on how AB 1040 applies to the specific facts of this situation and on how we ought to proceed.

Ms Barbara A. Milman
January 29, 1986
Page 3 of Three Pages

Thank you for your cooperation in this matter. If you need any further information or we can otherwise help you in any way, please feel free to contact me at your convenience.

Very truly yours,



JONATHAN T. SMITH
Staff Counsel

encl

cc: J. Peter Baumgartner, Law Department, PG and E

PGandE Employees' State/Local Good Government Fund

The PGandE Employees' State/Local Good Government Fund (Fund) is an ongoing independent political action committee. It was created for the employees of Pacific Gas and Electric Company and its subsidiaries to provide a means for participating employees to voluntarily pool their donations to support candidates for state and local office who share their views on vital issues. While the Company provides administrative and support services to the Fund, it does not contribute any corporate treasury monies to the Fund nor to any federal, state or local candidates or to their committees.

The Fund is administered by a seven-member Managing Committee comprised of four Company officers, two regional managers, and a member at large. The Managing Committee considers requests for contributions from candidates and recommendations from participating employees.

The Fund, which is registered and organized in conformance with all applicable State statutes, files periodic public disclosure statements which include information regarding employee contributions and the candidates and committees to whom the Fund makes contributions. These reports are public record and available to anyone who wishes to examine them.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

THIRTY VAN NESS AVENUE, SUITE 2011
SAN FRANCISCO, CA 94102-6080
PHONE: (415) 557-3686



FEB 21 3 27 PM '86

February 20, 1986

Mr. Joseph I. Kelley
Pacific Gas and Electric Company
Law Department
77 Beale Street
San Francisco, California

SUBJECT: Applicability of AB 1040 to PG&E Employees'
State/Local Good Government Fund

Dear Mr. Kelley:

Enclosed is a copy of my letter requesting advice from the Fair Political Practices Commission (FPPC) regarding the applicability of AB 1040 to the PG&E Employees' State/Local Good Government Fund. Also enclosed are copies of FPPC's two letters in response, the second of which asks that you join in our request for written advice on the question.

I have spoken with Robert Leidigh of FPPC regarding your desire not to join in our request but simply to offer PG&E's comments on the issue. He is currently considering the matter. He has indicated, however, that he feels uncomfortable proceeding with our request unless PG&E is involved in FPPC's consideration of our request. This involvement may not, however, require that PG&E actually join in our request. I shall keep you informed as this matter proceeds.

Very truly yours,

A handwritten signature in cursive script that reads "Jonathan T. Smith".

JONATHAN T. SMITH
Staff Counsel

JTS/gg

Enclosure

cc: Robert E. Leidigh, FPPC
J. Peter Baumgartner, PG&E

FPPC TRANSMITTAL OF CORRESPONDENCE

CORRESPONDENT: Smith, Jonathan T. ADVICE #: A-86-040
S. F. Bay Conservation + Development Comm'n
RE: _____

DATE REC'D: 1/31 DATE DUE: 3/5/86

LEGAL _____ ENFORCEMENT _____ TA&A _____
 BOB L.
____ KATHY
____ JOHN Mc
____ JEANETTE
____ JACK

Make 5 copies so I can circulate

____ REQUEST ADD'L INFO: DATE SENT: _____

____ ACKNOWLEDGMENT: DATE SENT: _____

____ REQUEST SEI

____ CC to: _____

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

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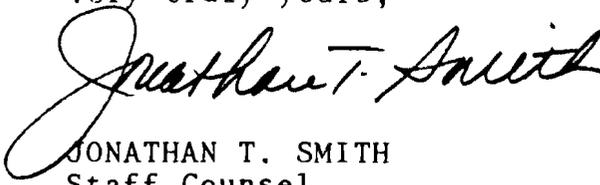
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Staff Counsel

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