



California Fair Political Practices Commission

January 6, 1987

The Honorable Bill Leonard
Assemblyman, 61st Assembly District
State Capitol, Room 3104
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. I-86-323

Dear Assemblyman Leonard:

This is in reply to your letter addressed to Robert Leidigh of the Commission's Legal Division. You asked, on behalf of your constituent James W. Anderson, for information on how to determine if an individual must register and file disclosure reports under the lobbying provisions of the Political Reform Act.^{1/}

QUESTION

Must consultants to water agencies who appear before regional water quality control boards register as lobbyists and file disclosure reports?

CONCLUSION

An individual who is paid to attempt to influence the actions of a regional water board with regard to a basin plan is required to register and file disclosure reports if he or she meets the definition of "lobbyist." In general, a consultant to a water

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

Your letter states only a general question. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 84113; Regulation 18329(c) (3).)

agency who engages only in "administrative testimony" is not a lobbyist and need not register or file disclosure reports. A consultant who, for compensation, engages in other direct communication with a qualifying official for the purpose of influencing legislative or administrative action is a lobbyist and must register and file disclosure reports if:

1. He or she receives or becomes entitled to receive \$2,000 or more in compensation in a calendar month for influencing legislative or administrative action; or
2. He or she receives or becomes entitled to receive any amount of compensation for engaging in direct communication with qualifying officials on at least 25 separate occasions in two consecutive months.

ANALYSIS

In his letter to you, Mr. Anderson noted that the Commission has determined that regional water quality control boards are "state agencies" for the purposes of the Act's lobbying disclosure provisions. Mr. Anderson is concerned that consultants to water agencies who appear before regional water quality control boards may be subject to the Act's lobbying provisions.

The attached letter to Fred Lowell (No. A-84-291, Dec. 24, 1984) concludes that, although most of the work of the regional water quality control boards (the "water boards") is not covered by the Act's lobbying provisions, the adoption of the water quality control plan (the "basin plan") is a quasi-legislative action to which the Act's lobbying provisions do apply.

Therefore, an individual who is paid to attempt to influence the actions of a regional water board with regard to a basin plan would incur reporting obligations under the Act if the individual meets the definition of a "lobbyist." In addition, a person or entity which employs an individual who qualifies as a lobbyist may be required to register and file reports as a lobbyist employer.

To determine if an individual meets the definition of a lobbyist, Regulation 18239 (copy enclosed) sets out two tests, a "compensation" test and a "contacts" test. An individual who meets either of these tests must register and file reports as a lobbyist:

- (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.

However, there is an important exception to the qualification tests for lobbyists which may apply to consultants to water agencies who attempt to influence the decisions of regional water boards. Subsection (a) of Regulation 18239 provides that 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. (Emphasis added.)

Therefore, a consultant for a water agency who engages only in "administrative testimony," and does not otherwise engage in direct communication for the purpose of influencing legislative or administrative action, will not meet the definition of a lobbyist.^{2/}

Subsection (d)(1) of Regulation 18239 defines "administrative testimony" as:

...influencing or attempting to influence administrative action by acting as counsel in, appearing as a witness in, or providing written submissions, including answers to inquiries, which become part of the record of, any regulatory or administrative agency proceeding:

- (A) Which is conducted as an open public hearing for which public notice is given;

^{2/}Even if a consultant does engage in other direct communication, that person would not become a lobbyist unless the test in Subsection (b) or (c) of Regulation 18239 is met.

Assemblyman Bill Leonard
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- (B) Of which a record is created in a manner which makes possible the creation of a transcript; and
- (C) With respect to which full public access is provided to such record or transcript and to all written material which is submitted to become part of the record.

Because we do not know the nature of the activities of the individuals and consultants to whom Mr. Anderson refers in his letter, we are unable to determine whether or not they meet the definition of "lobbyist" under the Act and Regulation 18239. However, we would be happy to discuss with them whether their activities require reporting under the Act's lobbying provisions.

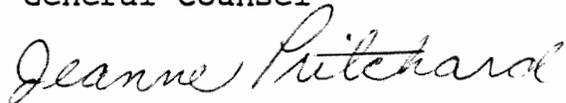
I have enclosed for your and Mr. Anderson's information the following materials:

- (1) The Political Reform Act of 1974 (as amended to Jan. 1, 1986). The lobbying registration and reporting provisions are contained in Sections 86100-86300;
- (2) Regulation 18239, which sets out the definition of "lobbyist";
- (3) The FPPC "Information Manual on Lobbying Provisions of the Political Reform Act," which describes in detail the registration and reporting requirements.

Please ask Mr. Anderson, or the individuals who may appear before the regional water boards to contact the Commission's Technical Assistance and Analysis Division at (916) 322-5662, and we will help them determine whether their activities are covered by the Act's lobbying provisions.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeanne Pritchard
Division Chief, Technical
Assistance & Analysis Division

DMG:JP:kmt

Enclosures

STATE CAPITOL
SACRAMENTO 95814
(916) 445-7552
DISTRICT OFFICE
1323 WEST COLTON AVENUE
SUITE 101
REDLANDS, CALIFORNIA 92374

(714) 798-4242 REDLANDS
(714) 383-4137 SAN BERNARDINO
800-325-9798 TOLL FREE

California Legislature

DEC 1 8 26 AM '86



BILL LEONARD

STATE ASSEMBLYMAN

SAN BERNARDINO COUNTY

November 25, 1986

Robert E. Leidigh
Counsel
Legal Division
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Mr. Leidigh:

I have enclosed a letter from my constituent, James W. Anderson, who is concerned about the Political Reform Act.

Would you please send me information on how one determines if they must register under the Fair Political Practices Commission Act.

Your assistance is greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Bill Leonard".

BILL LEONARD

BL:rhp
enclosure

COMMITTEES:
WAYS AND MEANS
UTILITIES AND COMMERCE
EDUCATION
CONSUMER PROTECTION
SUBCOMMITTEES:
WAYS & MEANS:
CHAIRMAN, EMPLOYEE COMPENSATION
EDUCATION
EDUCATION:
HIGHER EDUCATION
JOINT LEGISLATIVE
BUDGET COMMITTEE
JOINT COMMITTEE FOR THE REVIEW OF THE
MASTER PLAN FOR HIGHER EDUCATION
SPECIAL COMMITTEE ON
MEDICAL OVERSIGHT
SELECT COMMITTEE ON CHILD ABUSE

Bl

BRUNICK & PYLE

PROFESSIONAL LAW CORPORATION

1839 COMMERCENTER WEST

POST OFFICE BOX 6425

SAN BERNARDINO, CALIFORNIA 92412

TELEPHONE: AREA CODE 714

889-8301 824-0623

215 CAJON STREET

P. O. BOX 1320

REDLANDS, CALIFORNIA 92373

TELEPHONE (714) 793-0818

WILLIAM J. BRUNICK
RAYMOND D. PYLE
DONALD R. ALVAREZ
NAOMI SILVERGLEID
KAREN BOEGLER MCHUGH
MARGUERITE P. BATTERSBY
STEPHEN E. ANDERSON
JAMES W. ANDERSON

PLEASE REFER TO

November 18, 1986

Honorable William Leonard, Assemblyman
1323 W. Colton Ave., Suite 217
Redlands, CA 92373

Re: Fair Political Practices Commission

Dear Assemblyman Leonard:

Enclosed is a copy of an opinion from the Fair Political Practice Commission I referred to on Friday, November 14, 1986. As you will note, there is a finding that appearance before the South Coast Air Quality Management District is not subject to restriction because that agency is not a "State Agency" under the Act. However, the Regional Boards are subject to the Act when considering basin planning.

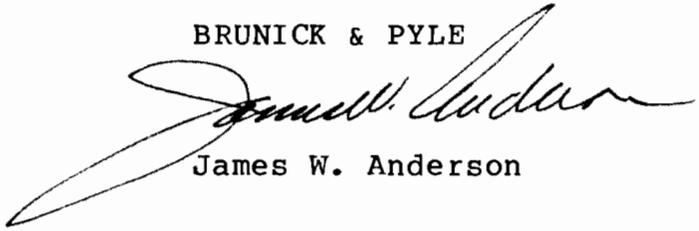
*RH or PW
ask FPPC
for the info on how
one determines if
they must register under
the
FPPC
act.*

The determination of who must file as a lobbyist when appearing before the Regional Board is then governed by the provisions of the Act and regulations of the FPPC. This may not present a problem for individuals, however, consultants to water agencies may unwittingly be subject to this law.

I appreciate your interest in the water resources area.

Sincerely,

BRUNICK & PYLE



James W. Anderson

JWA:jro

Enclosure

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California Fair Political Practices Commission

December 3, 1986

Honorable Bill Leonard
State Assembly
State Capitol
Sacramento, CA 95814

Re: 86-323

Dear Assemblyman Leonard:

Your letter requesting advice under the Political Reform Act was received on December 1, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Jeanne Pritchard". To the right of the signature, there is a small, illegible handwritten mark.

Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh
cc: James W. Anderson