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BAGATELOS & FADEM
A PROFESSIONAL CORPORATION
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BARRY FADEM
PETER A. BAGATELOS

TELEPHONE
(415) 982-7100

JAN 9 8 20 AM '87

January 8, 1987

Mr. Bob Leidigh
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

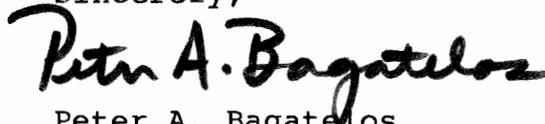
Dear Mr. Leidigh:

By letter, dated December 10, 1986, addressed to Diane Griffiths, we requested formal written advice pursuant to California Government Code Section 83114(b) regarding interpretation of a portion of AB2020. That request was designated as matter number 86-331 by your offices.

This is to advise you that we wish to withdraw the request for formal written advice. You confirmed for me in our telephone conversation several weeks ago that this request to withdraw is permissible and would be honored by you.

Thank you for your past assistance. Please contact me if you have any further questions.

Sincerely,



Peter A. Bagatelos

PAB/mlh

cc: California Glass Recycling Corporation

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PETER A. BAGATELOS

TELEPHONE
(415) 982-7100

December 10, 1986

Ms. Diane Griffiths
General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Ms. Griffiths:

This firm represents the California Glass Recycling Corporation (CGRC), a California corporation. CGRC is a trade association, comprised of major glass manufacturing companies in the State of California. We have been specifically authorized by our client to seek formal written advice pursuant to Government Code Section 83114(b) regarding the following matter.

The legislature recently adopted AB2020, which was introduced by assembly member Margolin. That Bill, known as the California Beverage Container and Litter Reduction Recycling Act, is the result of an agreement reached between traditional deposit supporters, organized labor and a coalition of beverage, packaging, retail and recycling industries. The bill establishes a system for certification of recycling centers, processors, and non-profit drop off programs, all intended to promote specified levels of recycling of beverage containers in the future. The bill will create the Beverage Container Recycling Advisory Committee to advise the Director of Conservation on beverage container recycling. The section creating this committee is contained in new Public Resources Code Section 14531 (copy enclosed).

The Beverage Container Recycling Advisory Committee shall consist of twelve members who have demonstrated interest and expertise in the recycling of beverage containers. The members of the Committee shall be appointed on or before March 1, 1987, and shall advise the Director on all matters concerning the recycling of beverage containers. It is specified that the members shall be considered "public officials" for purposes of Chapter 7 of Title 9 of the Government Code. (See Public Resources Code Section 14533). It is necessary that this Committee include representatives of the affected industries encompassed by AB2020. It is likely that a representative of the glass industry, including specifically a representative of the California Glass Recycling Corporation, may be appointed to this Committee.

Ms. Diane Griffiths
December 10, 1986
Page Two

We are writing to confirm that such an industry representative, if appointed to serve on this committee, would not be prohibited from participating in decisions of said Committee by virtue of Government Code Section 87100. We are writing to ask for formal written advice to confirm that, taking into account the language of AB2020, the nature and purposes of the program, and the legislative history involved, the industry represented would constitute a significant segment of the public generally in accordance with Title 2, Division 6 of the California Administrative Code, Section 18703(d). In this case, it is our understanding that such an industry representative may serve on the Committee authorized by AB2020 without having a conflict of interest pursuant to Government Code Section 87100 as long as decisions made will not have a materially financial effect on the official's financial interest which is distinguishable from its effect on the public generally.

We would appreciate receiving your advice at the earliest opportunity, since the creation of the Committee is imminent, and your advice will necessarily affect the appointments to be made. Thank you for your cooperation. Please advise if you require additional information.

Very truly yours,



Peter A. Bagatelos

PAB/mlh

cc: California Glass Recycling Corporation

LEGISLATIVE COUNSEL'S DIGEST

AB 2020, as amended, Margolin. Beverage containers: redemption and recycling values.

(1) Existing law does not establish redemption or recycling values for beverage containers.

This bill would prohibit counties and cities from denying a permit for the operation of mobile recycling units or reverse vending machines on private property zoned for commercial or industrial uses, as specified.

~~This~~ The bill would enact the California Beverage Container Recycling and Litter Reduction Act, and would require the Department of Conservation to implement its provisions, including the certification of recycling centers, ~~curbside programs, processors, and nonprofit dropoff programs.~~ The bill would create the Beverage Container Recycling Advisory Committee to advise the Director of Conservation on beverage container recycling. The committee would consist of ~~8~~ 12 members, ~~4~~ 6 of whom would be appointed by the Governor, ~~2~~ 3 by the Senate Committee on Rules, and ~~2~~ 3 by the Speaker of the Assembly.

The bill would require processors and beverage distributors to report certain information monthly to the department, and the department would be required to make determinations concerning redemption rates *and recycling rates* every 6 months, *except as specified.*

The bill would establish a redemption value of at least 1¢ for every beverage container *which is not a refillable beverage container* sold in the state on and after ~~April~~ September 1, 1987, and would provide that, when certain beverage containers' redemption rates do not meet specified levels, these beverage containers would then have a redemption value of at least 2¢ *on and after December 31, 1989*, or, after December 31, 1992, 3¢, *except as specified.* The bill would declare the intention of the Legislature that the redemption value is a regulatory fee and is not subject to the limitations imposed by Article XIII B of the California Constitution. The bill would require every beverage container manufacturer, on and after ~~April~~ September 1, 1987, to indicate a message on every empty beverage container and would require dealers to ~~notify consumers of~~ identify the ~~location~~ address of the

nearest recycling centers in the dealer's trade area to establish a recycling center if there is no recycling center in the dealer's trade area center.

The bill would require that there be a recycling center or location in a county defined, and would require the department to meet this requirement, including actions to meet this requirement, including to establish a recycling center pursuant to the procedure.

Each certified recycling center would be required to pay the ~~minimum~~ redemption value redemption bonus for each returned beverage container to pay the applicable refund value returned refillable beer and other malt beverages. The processor would be required to pay the curbside program, or nonprofit dropoff program, redemption value, redemption administrative costs, *except as specified*, a portion of the processing fee for each returned by the center or program. The processor would be required to pay the processor the redemption bonus, a specified administrative cost, *specified*, and the processing fee for each container returned by a recycling center, dropoff or collection program, or nonprofit program. The department would be required to pay to the processor and a distributor would be required to pay to the department the redemption value for each container sold or transferred to a processor. The provisions would not become operative until January 1, 1987, except the payment requirement would become operative ~~April~~ September 1, 1987, and would require the department to establish a program to require every empty beverage container with a redemption value of ~~zero or negative~~ scrap value *which is not less than the amount.* The bill would require beverage container manufacturers to pay this fee to the department and the department to pay these fees to processors. The department would be required to pay a portion of the fee to processors. The bill would require the department to report the redemption values paid by the

department, *processing fees, and fines* into the California Beverage Container Recycling Fund, which this bill would create in the State Treasury. The *bill would continuously appropriate the money in the fund would be required to be expended by* to the department for expenditure in a specified manner, ~~upon appropriation by the Legislature~~, including the payment of redemption values, expenditure for administrative expenses, and deposit into a reserve for contingencies. The bill would require the amounts remaining in the fund to be ~~expended, upon appropriation from the Legislature, deposited into the Redemption Bonus Account, which this bill would create as a subaccount in the California Beverage Container Recycling Fund and would continuously appropriate the money in the account to the department for the awarding of redemption bonuses, loans, and grants and convenience incentive payments to recycling centers, and for funding litter abatement and recycling activities and the providing of information activities, pursuant to a specified formula. The bill would authorize operators of reverse vending machines or processors to apply to the California Pollution Control Financing Authority for financing assistance and would authorize specified institutions or persons to apply to the State Energy Resources Conservation and Development Commission for loans and grants from the Energy Technologies Research, Development, and Demonstration Account. The bill would appropriate \$200,000 \$5,000,000 from the General Fund to the department as a loan for the initial costs in carrying out the bill's provisions and would appropriate from the California Beverage Container Recycling Fund an amount, as specified, to the department for expenditure, as specified, from April 1, 1987, to June 30, 1987, inclusive.~~

The bill would prohibit the enforcement or implementation of ordinances, resolutions, rules, or regulations of a city, county, or other public agency ~~relating to matters covered by the bill establishing refund or redemption values deposits, or fees.~~ The provisions of the bill would become inoperative if a state or federal law is enacted which establishes beverage container refunds, deposits, or fees. The bill would also define terms. The bill would subject

any person convicted of violating the act than \$100 per day, and would subject certain fraudulent actions ~~or~~, a failure values to the department *with intent redemption of redeemed containers in imprisonment in the county jail or stat than one year, to a fine of not more than both fine and imprisonment, or to impr prison for 16 months, 2 years, or 3 year more than \$10,000, or twice the unma plus interest, whichever is greater, state-mandated local program by creati department would also be authorized to up to \$100 per day for violation of the.*

(2) The California Constitution re reimburse local agencies and school dis mandated by the state. Statutory procedures for making that reimburse

This bill would provide that no reimbl by this act for a specified reason.

(3) The bill would declare that immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: yes. Fis State-mandated local program: yes.

The people of the State of California

1 SECTION 1. Section 66787.
2 Government Code, to read:
3 66787.6. (a) A local agency sha
4 for the operation of a mobile recy
5 vending machine, which is certifie
6 certified, as a recycling location pu
7 (commencing with Section 14
8 Resources Code, on private prop
9 that is zoned for commercial or
10 located within, or to be located w
11 zone, if the operator of the mob
12 reverse vending machine submit
13 from the property owner granting

1 14529.7. This division does not apply to any program
2 involving the collection and payment of deposits for
3 beverage containers sold, used, or consumed at national
4 parks and monuments, military installations, or any other
5 property owned by and under the jurisdiction of the
6 United States.

7
8 CHAPTER 3. ADMINISTRATION
9

10 14530. This division shall be administered by the
11 department. Notwithstanding Section 607, the
12 department may, for organizational purposes, create a
13 new division, bureau, or office to administer this division.
14 If a new division, bureau, or office is created, any
15 reference to "department" or "director" in this division
16 shall be deemed to be a reference to that entity and the
17 officer in charge of that entity.

18 14530.5. (a) For purposes of entering into contracts
19 for consulting or advisory services necessary to
20 implement this division, the requirements of Sections
21 11042 and 14615 of the Government Code and Sections
22 10295 and 10318 of the Public Contract Code do not apply
23 to the activities of the department pursuant to this
24 division.

25 (b) In addition to any regulations which the
26 department is required by statute to adopt, the
27 department may adopt any other rules and regulations
28 pursuant to Chapter 3.5 (commencing with Section
29 11340) of Part 1 of Division 3 of Title 2 of the Government
30 Code which the department determines may be
31 necessary or useful to carry out this division or any of the
32 department's duties or responsibilities imposed pursuant
33 to this division.

34 (c) The department may prepare, publish, and issue
35 printed pamphlets and bulletins which the director
36 deems necessary for the dissemination of information to
37 the public concerning the activities of the department
38 pursuant to this division.

39 (d) This section shall remain in effect until January 1,
40 1989, and on that date is repealed unless a later enacted

1 statute, which is enacted before Jan
2 or extends that date.

3 14530.5. (a) In addition to any r
4 department is required by stat
5 department may adopt any other r
6 pursuant to Chapter 3.5 (comm
7 11340) of Part 1 of Division 3 of Title
8 Code which the department o
9 necessary or useful to carry out this
10 department's duties or responsibilit
11 to this division.

12 (b) The department may prepar
13 printed pamphlets and bulletins
14 deems necessary for the disseminat
15 the public concerning the activitie
16 pursuant to this division.

17 (c) This section shall become
18 1989.

19 14530.6. Upon the request of
20 Attorney General shall represent th
21 state in litigation concerning affair

22 14531. There is hereby crea
23 Container Recycling Advisory Com
24 consist of ~~eight~~ 12 members who
25 interest and expertise in the re
26 containers. ~~Four~~ Six members of th
27 appointed by the Governor, ~~two~~ th
28 appointed by the Senate Committe
29 three members shall be appointed
30 Assembly. The members of the
31 appointed on or before March 1, 1
32 shall advise the director on all ma
33 recycling of beverage containers.
34 meet at the call of the director, b
35 every three months.

36 14532. No member of the advi
37 receive a salary, but each shall be
38 sum not to exceed ~~fifty dollars~~ (\$50
39 (\$100) per day, as established by
40 each day spent in actual attendance

1 and from, meetings of the committee, together with the
2 necessary traveling expenses and meal allowances, as
3 approved by the department.

4 14533. The members of the committee are public
5 officials for purposes of, and are subject to, Chapter 7
6 (commencing with Section 87100) of Title 9 of the
7 Government Code, including, but not limited to, Article
8 2 (commencing with Section 87200) of that chapter.

9 14534. The committee shall select annually, from its
10 membership, a chairperson.

11 14535. The committee shall be subject to the
12 Bagley-Keene Open Meeting Act (Article 9
13 (commencing with Section 11120) of Chapter 1 of Part 1
14 of Division 3 of Title 2 of the Government Code).

15 14536. (a) Except as provided in subdivision (b), the
16 director shall adopt, amend, or repeal all rules and
17 regulations in accordance with Chapter 3.5
18 (commencing with Section 11340) of Part 1 of Division 3
19 of Title 2 of the Government Code.

20 (b) The director shall adopt *regulations, and may*
21 *adopt emergency regulations on or before November 30,*
22 *1986, for the purposes of for the purposes of*
23 *implementing Sections 14538, 14539, 14541, 14550, and*
24 *14574.*

25 ~~These emergency regulations~~ *Any emergency*
26 *regulations, if adopted, shall be adopted in accordance*
27 *with Chapter 3.5 (commencing with Section 11340) of*
28 *Part 1 of Division 3 of Title 2 of the Government Code,*
29 *and for the purposes of that chapter, including Section*
30 *11349.6 of the Government Code, the adoption of these*
31 *regulations is an emergency and shall be considered by*
32 *the Office of Administrative Law as necessary for the*
33 *immediate preservation of the public peace, health and*
34 *safety, and general welfare. Notwithstanding Chapter 3.5*
35 *(commencing with Section 11340) of Part 1 of Division 3*
36 *of Title 2 of the Government Code, any emergency*
37 *regulations adopted pursuant to this section shall be filed*
38 *with, but not be repealed by, the Office of Administrative*
39 *Law and shall remain in effect until revised by the*
40 *director.*

1 (c) Before adopting any regula
2 tion, the director shall submit
3 a committee, *if it has been appoint*
4 *comments.*

5 14536.5. In carrying out the div
6 ~~shall use~~ *may solicit and use all*
7 *other state agencies, including, b*
8 *California Waste Management*
9 *Department of Consumer Affairs.*
10 *state agency performs functions of*
11 *department's functions, the depa*
12 *with, or cooperate with, the agenc*
13 *division.*

14 14537. The department shall
15 records, and accounts of all of it
16 books, records, and accounts are
17 audit by an auditing firm selected
18 *The auditing firm or the departme*
19 *selective audit of entities maki*
20 *receiving payments from, the depa*
21 *whether redemption values and*
22 *fees are being paid to the depart*
23 *containers sold in California, and th*
24 *redemption bonuses, and processin*
25 *out properly by the department. Th*
26 *a part of an annual report, copi*
27 *submitted to the Governor and th*

28 14538. The department shall ce
29 recycling centers pursuant to this
30 shall adopt, by regulation, a
31 self-certification of recycling center
32 for certification. These regulations
33 information be submitted to the
34 penalty of perjury. The regulatio
35 *shall not be limited to requiring, th*
36 *conditions be met for certification*
37 *any additional conditions:*

38 (a) The operator of the
39 demonstrates, to the satisfaction of
40 the operator will operate in accorda



California
Fair Political
Practices Commission

December 15, 1986

Peter A. Bagatelos
Bagatelos & Fadem
The International Building
601 California Street, Suite 1801
San Francisco, CA 94108

Re: 86-331

Dear Mr. Bagatelos:

Your letter requesting advice under the Political Reform Act was received on December 11, 1986, by the Fair Political Practices Commission. As General Counsel, I would normally be responsible for assigning your request to an attorney for response and for approving the response. However, your request concerns AB 2020, which was carried by Assemblyman Burt Margolin, my former employer. During the course of my employment, I provided staff support to Mr. Margolin on this measure. Therefore, I have referred the matter to Robert Leidigh, the senior attorney in our Legal Division for processing and approval. Mr. Leidigh will contact you once the letter has been assigned. I will not participate in preparation of or approval of the response to your advice request.

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,

Diane M. Griffiths
General Counsel

DMG:km

cc: Robert E. Leidigh