



# California Fair Political Practices Commission

April 17, 1987

Devon L. Workman  
County Counsel  
County of Glenn  
525 West Sycamore Street  
Willows, CA 95988

Re: Your Request for Advice  
Our File No. I-87-078

Dear Mr. Workman:

You have written requesting our assistance in analyzing a situation in Glenn County. We are treating your request as one for informal assistance.<sup>1/</sup>

## QUESTIONS

1. May a firm which provides computer evaluation consulting services to the county sell various computer supplies to the county?
2. May the computer evaluation consulting firm bid on small items required by the county, such as word processing software updates costing less than \$1,000? If so, is competitive bidding required?
3. Are employees of the consulting firm barred from participating in recommendation of the item to be purchased or in evaluation of the bid responses?

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<sup>1/</sup> Although you have the consent of the firm involved, your request is not made on behalf of the affected individuals. You are, instead, seeking general guidance in your role as county counsel. Therefore, we treat your request as one seeking informal assistance. (Regulation, 2 California Administrative Code Section 18329(a)(1), copy enclosed.) Informal assistance does not provide the requestor with the immunities provided for in Government Code Section 83114. (Regulation 18329(c)(3).)

### CONCLUSIONS

1. It is permissible, under the Political Reform Act, for a firm which provides computer evaluation consulting services to also provide computer supplies, provided that certain procedures are observed.

2. The firm may also bid on small items of work, provided that certain procedures are observed. Competitive bidding would improve the process, but it is not required.

3. Nonparticipation of the firm's employees in recommendation of the item to be purchased and in evaluation of bid responses is imperative.

### FACTS

The County of Glenn has contracted with HBK Computer Systems, Inc., to provide certain services to the county, including the following:

1. The firm has prepared a "Data Processing Needs Assessment Study" and a "Plan of Implementation" of the study.

2. The firm advises the county's Data Processing Committee, which is made up of county department heads. The committee is responsible for advising the board of supervisors in carrying out the plan of implementation. The firm, in turn, advises the committee on the status of implementation and on the committee's responsibilities.

3. In carrying out the plan of implementation, the firm does research to determine the current state of the art in computers. The firm also determines who are potential vendors for hardware and software and whether the hardware will be compatible with the current computer systems and the physical facilities of the county. As a result of the research and advice, the committee recommends to the board of supervisors which equipment is necessary. Thereafter, the firm assists the county in preparing the specifications for the bids or proposals. Sometimes the firm actually prepares the bid documents.

4. Once the bids have been received, the firm evaluates the bid responses and advises the committee as to the appropriate bid to select. Once the vendor is chosen, the firm coordinates delivery and installation between county personnel

and the vendors. Sometimes the firm does the installation, especially in the case of software.

5. The firm also assists the county in working out simple bugs in some of the items purchased and coordinates with vendors on problems the equipment or software may have.

6. The firm is available at all times for consultation with almost all county personnel for such things as advice, training and literature on current or future needs.

#### ANALYSIS

The Political Reform Act (the "Act")<sup>2/</sup> prohibits any public official from making, participating in making, or using his or her official position to influence any governmental decision in which he or she has a financial interest. (Section 87100.) An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more....

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c) and (d).

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<sup>2/</sup> 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.

The proscription in the Act applies only to public officials. The term "public official" is defined in the Act as follows:

"Public official" means every member, officer, employee or consultant of a state or local government agency, but does not include judges and court commissioners in the judicial branch of government....

Section 82048.

In a somewhat analogous situation, also arising in Glenn County, the Commission in In re Maloney, 3 FPPC Ops. 69, No. 76-082 (copy enclosed), stated with respect to a contract county surveyor-engineer:

The only terms in Section 82048 that might arguably apply to this situation are "consultant" and "employee." Our regulation defining the term "consultant," ... excludes a person who does no more than provide advice, information, recommendation or counsel to an agency and whose advice is provided independent of the agency's control or discretion. 2 Cal. Adm. Code Section 18702(a)(2). The preparation of surveys and engineering studies would appear to fall within this exclusion. When performing these services, the county surveyor-engineer is not involved in any official decision making. He is merely carrying out the terms of a contract just as any vendor of goods or services to the county might. He is not subject to the control or discretion of the county when he performs his work, but is governed only by the provisions of his contract....

Our answer to this question assumes that in his role as county surveyor, the contractor has no say in determining the extent of the contract work he and his firm will perform for the county. It is our understanding that the contractor has no such say. If, in his role as county surveyor, the contractor could determine the extent of contract work for his private firm, there would be a conflict of interest requiring disqualification.

In re Maloney, supra, at 71.

The relevant regulation defines "consultant" as a "natural person." Thus, the firm itself is not a consultant within the meaning of the Act. It is the personnel who actually perform

the work who would be consultants. The question remains whether their duties are such as to bring them within the meaning of that term.<sup>3/</sup>

Among the duties described in your letter and the contract are the following:

1. The firm is to "provide management for new computer hardware/software implementation projects."
2. The firm will "provide day-to-day management of county data processing activities."
3. The firm's representatives "will attend all Data Processing Committee meetings and any County Board of Supervisor meeting which requires" their presence.
4. Once bids are received, "the firm evaluates the bid responses and advises the Committee as to the appropriate bid to select."

When performing the functions described above, we believe the firm's employees are "consultants" within the meaning of the Act.<sup>4/</sup> They are doing much more than rendering independent advice and recommendations. They are interacting directly with the decision-makers on an on-going basis as an integral part of the decision-making process. Their participation involves a broad exercise of discretion. Therefore, in performing these tasks, the firm's employees are public officials within the meaning of the Act. Consequently, they should be covered by the county's conflict of interest code. In addition, those employees are subject to the disqualification requirements of Section 87100.

The firm's employees who perform those tasks which involve them in the county's decision-making process are "participating" in governmental decisions within the meaning of

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<sup>3/</sup> The terms of the contract between the county and the firm provide that the firm is an independent contractor and is responsible for workers compensation coverage and all other insurance. Thus, as in Maloney, it is clear that the firm's employees are not county employees because there is no employer-employee relationship.

<sup>4/</sup> For discussion and analysis of this issue in analogous circumstances, see Advice Letters to Geoffrey Hayden, No. A-84-319, and David Kaplan, No. A-82-108 (copies enclosed).

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Section 87100. (Regulation 18700(c), copy enclosed.) The firm is either a source of income to these employees or an investment interest or both. (Section 87103(a) and (c).) They are also employees of the firm. (Section 87103(d).) Consequently, they must disqualify themselves from participating in any decisions which will have a financial effect upon the firm. (Sections 87100 and 87103.) This is especially true with respect to contracts made with the firm. (Regulation 18702.1, copy enclosed.)<sup>5/</sup>

However, the Act does not prohibit the firm's employees from negotiating the firm's contract with the county, so long as they do so while acting solely in their private capacity. (Regulation 18700(d)(3) and Regulation 18700.1(b)(3), copies enclosed.) The contracting decisions on the part of the county must be made by county officials. It is appropriate under the Act for the county to contract with a private firm to receive both consulting services and supplies, so long as appropriate disinterested county officials make those decisions.

We turn now to your specific questions.

1. The county may contract with the firm to provide both consulting services and supplies without violating the provisions of the Act.

2. The firm may bid on other work and materials, so long as its employees do not participate in any way in the preparation of the criteria for the bid or in the evaluation of the bid responses.<sup>6/</sup> Based upon the description of the duties which the firm's employees are currently expected to perform, this may not be feasible unless an outside consultant is brought in as suggested in In re Maloney, supra, at 79-80.

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<sup>5/</sup> See In re Maloney, supra, at 73; see generally 66 Ops. Calif. Atty. Gen. 156 (1983). This agency does not advise regarding issues which may be raised under Section 1090. You may wish to consult with the Attorney General for assistance with issues raised by that section.

<sup>6/</sup> Where a firm is bidding or expects to bid on a particular contract, it is reasonably foreseeable that decisions affecting the awarding of the contract will have a material financial effect upon the firm. (See, In re Thorner, 1 FPPC Ops. 198, No. 75-089, copy enclosed.)

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(See also enclosed Advice Letter to Gerard Rose, No. A-84-306.) Assuming that the firm's employees are not involved in the preparation of the criteria for the bids, a competitive bidding procedure will decrease any likelihood of improper influence over the selection process.

3. See our answers above.

I trust that the foregoing provides you with sufficient guidance in this regard. Should you have questions about this letter, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Robert E. Leidigh  
Counsel, Legal Division

DMG:REL:plh  
Enclosures

STATE CAPITOL  
SACRAMENTO, CALIFORNIA 95814  
PHONE: (916) 445-6161

# Assembly California Legislature

7777 ALVARADO ROAD  
SUITE 377  
LA MESA CA 92041  
PHONE: (619) 237-7777

MAR 5 9 45 AM '87



**LARRY STIRLING**  
ASSEMBLYMAN, SEVENTY-SEVENTH DISTRICT

March 3, 1987

Mr. John H. Larson  
Chairman  
Fair Political Practices Commission  
428 'J' Street, Suite 800  
Sacramento, CA 95814

Dear Mr. Larson:

In view of the constant barrage of publicity about legislators and conflicts of interest, I would appreciate it if you would ask your staff to render an opinion.

1. What precisely constitutes a conflict of interest in regards to an attorney-legislator?
2. What are the do's and don'ts of an attorney-legislator?
3. What are the authoritative and relevant publications <sup>applicable to</sup> ~~and~~ ~~relations of~~ attorney-legislators?
4. What precisely are the ethical rights and <sup>obligations</sup> ~~allegations~~ of an attorney legislator who is "of counsel" with a law firm?
5. What precisely is the status of an attorney-legislator who is "of counsel?"

Your staffs' timely response will go a long way toward helping attorney-legislators avoid problems.

Thank you for your time and attention.

Sincerely,

LARRY STIRLING  
77th Assembly District

sf:3/7/87

LS:plm

DEVON L. WORKMAN  
County Counsel

County of Glenn  
OFFICE OF  
**County Counsel**  
525 West Sycamore Street  
WILLOWS, CALIFORNIA 95988

F P F O  
Telephone  
MAR 10 2 52 PM '87  
(916) 934-2828

March 4, 1987

Diane Griffiths  
Chief Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Dear Ms. Griffiths:

Pursuant to our telephone conversation on February 27, 1987, I am requesting a formal opinion regarding the following situation:

FACTS

The County of Glenn has retained a consulting firm (hereinafter "firm") to advise and assist the county in the establishment and implementation of its data processing system. A copy of the contract is enclosed for your review. The name and address of the firm is HBK Computer Systems, Inc., 6445 Skyway, Paradise, CA 95969. I have received the consent of one of the officers of the firm to submit this request.

The services provided by this firm include the following:

1. The firm has prepared a "Data Processing Needs Assessment Study" and a "Plan of Implementation" of the study.
2. The firm advises the County's Data Processing Committee which is made up of County Department Heads. The Committee is responsible for advising the Board of Supervisors in carrying out the Plan, but the firm advises the Committee on the status of the implementation and on the Committee's responsibility.
3. In carrying out the Plan the firm does research in determining the current state of the art in computers, who are potential vendors for the hardware and software and whether the hardware will be compatible with the current computer systems and the physical facilities of the county. As a result of the research and advice, the Committee recommends to the Board of Supervisors which equipment is necessary. Thereafter, the firm assists the County in preparing the specifications for the bids or proposals. Sometimes the firm actually prepares the bid documents.

Ms. Diane Griffiths  
March 4, 1987  
Page Two

4. Once the bids have been received, the firm evaluates the bid responses and advises the Committee as to the appropriate bid to select. Once the vendor is chosen, the firm coordinates delivery and installation between county personnel and the vendors. Sometimes the firm does the installation, especially in the case of software.

5. The firm also assists the county in working out simple bugs in some of the items purchased and coordinates with vendors on problems the equipment or software may have.

6. The firm is available at all times for consultation with almost all County personnel for such things as advice, training and literature on current or future needs.

#### QUESTIONS

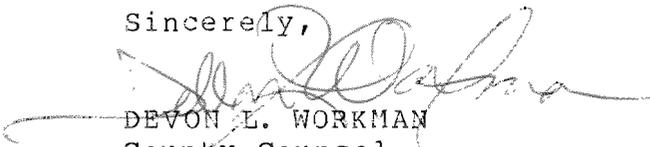
The following questions have arisen:

1. From time to time the County has the need to obtain computer supplies (sometimes urgently other times not urgently). If the county were able to obtain them from the firm, it could obtain them at a lower price than it could on the open market and would be able to obtain them quicker. Is it permissible for the firm to sell to the County under any circumstances such items as floppy disketts (\$11.00 per box of ten), modems (\$180 a piece), graphics boards (\$200) or miscellaneous computer supplies?

2. Could the consultant bid on small items required by the county, such as word processing software updates costing less than \$1000? Could the firm submit quotations to the County purchasing agent for such items? If the firm's quotation or bid is the lowest, could it be accepted by the County? Could the firm submit bids or quotations if it did not participate in the recommendation of the item or participate in the evaluation of the bid responses?

Your quick response to this request would be appreciated. If you need any further information or wish to discuss the matter feel free to call me or the firm.

Sincerely,



DEVON L. WORKMAN  
County Counsel

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MANAGEMENT CONTRACT  
FOR GLENN COUNTY DATA PROCESSING

\* \* \*

JUN 25 1985

THIS CONTRACT is made and entered into this day of 1985, by and between the COUNTY OF GLENN, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and HBK COMPUTER SYSTEMS, INC., hereinafter referred to as "CONTRACTOR".

1. RELATIONSHIP OF PARTIES. Contractor shall provide consulting services to the County's Data Processing Committee and coordinate the data processing activities within the county. In this regard, it is understood and agreed that Contractor is acting at all times as an independent contractor in performing its services and is not an agent of the County under this contract and, except as set out immediately below, neither party shall be responsible now or in the future for the debts, obligations, or liabilities of the other party.

2. CONTRACTOR'S RESPONSIBILITIES. In the performance of such services Contractor shall have the following duties and responsibilities which are defined in Exhibit "A" attached hereto and made a part hereof:

- A. Systems analysis, program enhancement and maintenance.
- B. Office automation consulting and training.
- C. Management consulting, feasibility analysis and application research.

- 1 D. Hardware acquisition consulting.
- 2 E. Project management and implementation.
- 3 F. Teleprocessing networking.
- 4 G. Data base computer systems management.
- 5 H. Attendance at appropriate meetings (Board of Super
- 6 visors, Data Processing Committee, etc.)
- 7 I. Submit a monthly work status report, in writing to
- 8 the Chairman of the County's Data Processing Commit-
- 9 tee and to the Board of Supervisors
- 10 1) describing progress in period under review, and
- 11 2) Identifying actual or potential problems in com-
- 12 pleting the work program, assessing their prob-
- 13 able impact and recommending solutions.

14 3. CONTRACTOR'S SERVICES NOT INCLUDED. Services to be  
15 performed by the Contractor shall not include the programming of  
16 new software applications. Disputes as to whether the work is pro-  
17 gram enhancement or new software application shall be settled by  
18 the Data Processing Committee. However, it is herewith agreed that  
19 if requested by County, Contractor shall provide County with pro-  
20 gramming of new software applications or with other services not  
21 included hereunder at the rates set forth in Exhibit "B" attached  
22 hereto and made a part hereof.

23 4. INDEMNIFICATIONS. To the fullest extent permitted  
24 by law, the Contractor shall indemnify and hold harmless the County,  
25 its agents, officers, and employees against and from any and all  
26 claims, lawsuits, actions, liability, damages, losses, expenses,

1 and costs (including but not limited to attorney's fees), brought  
2 for, or on account of, injuries to or death of any person or per-  
3 sons, including employees of the Contractor, or injuries to or  
4 destruction of property, including the loss of use thereof, arising  
5 out of, or alleged to arise out of, or resulting from, the perform-  
6 ance of the work described herein, provided that any such claim,  
7 lawsuit, action, liability, damage, loss, expense, or cost is  
8 caused in whole or in part, by any negligent or intentional act or  
9 omission of the Contractor, any subcontractor, or anyone for whose  
10 acts any of them may be liable, regardless or whether or not it is  
11 caused by the passive negligence of a party indemnified hereunder.

12 5. TERM. This Contract shall be for a continuous three  
13 (3) year period commencing on July 1, 1985. This Contract may be  
14 renewed for successive three (3) year periods by written agreement  
15 of parties.

16 6. TERMINATION

17 A. For Cause. In the event of a breach by either party,  
18 the other party may terminate this Contract by giving 60 days prior  
19 written notice of default and an opportunity to cure such default.  
20 If such default is cured or substantial steps have been taken to  
21 cure that default within 30 days of receipt of such notice, this  
22 Contract shall remain in full effect; if not, this Contract shall  
23 terminate on the 60th day after receipt of that notice or on such  
24 other date as the parties may mutually agree.

25 B. Without Cause. Either party may terminate this Con-  
26 tract without cause by delivering a 120 day prior written notice

1       thereof to the other party.

2               7.   COMPENSATION.  As compensation for the services to  
3       be performed hereunder by the Contractor, the County agrees to  
4       pay Contractor the sum of \$6,250 on the last day of each and every  
5       month commencing on July 31, 1985.

6               8.   MODIFICATION.  This Contract may only be modified by  
7       a written amendment hereto, executed by both parties.

8               9.   ASSIGNMENT.  Contractor shall not assign any interest  
9       in this Contract and shall not transfer any interest in the same  
10       without the prior written consent of the County, except that claims  
11       for money due or to become due the Contractor from the County under  
12       this Contract may be assigned by the Contractor to a bank, trust  
13       company, or other financial institution without such approval,  
14       written notice of any such transfer shall be furnished promptly to  
15       the County.  Any attempt at assignment of rights under this Con-  
16       tract except for those specifically consented to by both parties  
17       or as stated above shall be void.

18              10.  INSURANCE.  Contractor shall obtain all insurance  
19       required herein.  Certificates of insurance evidencing the issuance  
20       of such insurance shall be submitted to and approved by County  
21       prior to the execution of this Contract by County.  The certifi-  
22       cates of insurance shall contain a provision that coverage afforded  
23       under the policies will not be cancelled until at least 20 days  
24       prior written notice has been given to County.  Together with the  
25       certificates of insurance, Contractor shall deliver to the County  
26       an "Additional Insured Endorsement" naming the County, its officers,

1 employees and agents as additional insureds under each of the  
2 policies required herein.

3 A. Compensation Insurance. The Contractor shall pro-  
4 cure and shall maintain during the life of the Contract, Workers'  
5 Compensation Insurance for all of his employees to be engaged in  
6 work.

7 B. Contractor's Public Liability and Property Damage  
8 Insurance. The Contractor shall procure and shall maintain, during  
9 the life of the Contract, Contractor's Public Liability Insurance  
10 in an amount not less than \$ 300,000 for injuries, including  
11 death, to any one person, and subject to the same limit for each  
12 person, in an amount of not less than \$ 300,000 on account of  
13 one incident or occurrence, and Property Damage Insurance in an  
14 amount of not less than \$ 1,000,000.

15 11. ATTORNEYS' FEES AND COST. If any action at law or  
16 in equity is necessary to enforce or interpret the terms of this  
17 Contract, the prevailing party shall be entitled to reasonable  
18 attorneys' fees, costs, and necessary disbursements in addition  
19 to any other relief to which such party may be entitled.

20 12. ADDITIONAL PROVISIONS. This Contract shall be  
21 governed by the laws of the State of California. It constitutes  
22 the entire agreement between the parties regarding its subject  
23 matter. This Contract supersedes all proposals, oral and written  
24 and all negotiations, conversations or discussions heretofore and  
25 between the parties related to the subject matter of this Contract.

26 .....



**CONTRACTOR'S RESPONSIBILITIES****A: Systems analysis, program enhancement and maintenance.**

Contractor will perform necessary analysis of county request for computer application software program changes. This analysis will categorize request by program maintenance, program enhancement or new development. Contractor will provide necessary changes to existing computer application software source programs and produce "executable" program modules. Contractor will implement new programs and provide necessary training to utilize changes.

**B: Office automation consulting and training.**

Contractor will assist county departments in the utilization of R WORD and WORDSTAR word processing systems. Contractor will provide training and ongoing technical assistance.

**C: Management consulting, feasibility analysis and application research.**

Contractor will provide day-to-day management of county data processing activities. Contractor will provide ongoing research of available computer software which might benefit the county. Contractor will provide feasibility data on various computer related applications which are requested by county.

**D: Hardware acquisition consulting.**

Contractor will assist county in procurement of new computer hardware to insure that county wide compatibility is met. Contractor will make recommendations for purchase of various computer equipment.

**E: Project management and implementation.**

Contractor will provide management for new computer hardware/software implementation projects.

**F: Teleprocessing networking.**

Contractor will assist county in all computer applications which require computer-to-computer or terminal-to-computer activity through telephone service.

**G: Data base computer systems management.**

Contractor will provide "capacity management" for all installed computer systems in county. Contractor will notify county of systems in danger of exceeding storage capacity and recommend appropriate action.

**H: Attendance at appropriate meetings.**

Contractor will attend all Data Processing Committee meetings and any County Board of Supervisor meeting which requires contractor's presence. Contractor will attend all other meetings at county's request.

**I: Submit monthly work status report.**

Contractor will provide detailed report of months activity for various projects. Contractor will notify county of problems encountered, their potential impact and recommended solutions.

HBK COMPUTER SYSTEMS, INC.  
GLENN COUNTY DATA PROCESSING  
SCHEDULE OF SERVICES

1                   Data Processing Management Contract provides for the  
2 following services:

3	Administration & Consulting		
4	1248 hours (156 days) at \$31.75/hr	=	\$39624.00
5	Programming		
6	1248 hours (156 days) at \$23.75/hr	=	\$29640.00
7	Office Automation & Training		
8	416 hours (52 days) at \$13.80/hr	=	\$ 5740.00
9	Total		<hr/> \$75004.80

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11                   Rates for new Software Applications and other services  
12 not included above:

13	Administration & Consulting	\$40.00/hr
14	Programming	\$30.00/hr
15	Office Automation & Training	\$17.50/hr

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Exhibit "B"



# California Fair Political Practices Commission

March 11, 1987

Devon L. Workman  
Glenn County Counsel  
525 West Sycamore Street  
Willows, CA 95988

Re: 87-078

Dear Mr. Workman:

Your letter requesting advice under the Political Reform Act was received on March 10, 1987 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 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 "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh