



# California Fair Political Practices Commission

September 1, 1987

Peter J. Tennyson  
Stradling, Yocca, Carlson & Rauth  
P. O. Box 7680  
Newport Beach, CA 92660-6441

Re: Your Request for Advice  
Our File No. A-87-209

Dear Mr. Tennyson:

You have requested advice on behalf of Ventura Farms concerning the lobbying disclosure provisions of the Political Reform Act.<sup>1/</sup>

## QUESTION

Was Ventura Farms required to file reports as a lobbyist employer when an attorney retained by Ventura Farms, and employees of Ventura Farms, engaged in unauthorized lobbying activities?

## CONCLUSION

The unauthorized lobbying activities engaged in by the attorney retained by Ventura Farms would not, under the facts presented in your letter, require Ventura Farms to file disclosure reports as a lobbyist employer. However, if the employees of Ventura Farms who assisted in the lobbying effort are not normally required to be formally authorized when engaging in similar types of activities on behalf of Ventura Farms, disclosure may be required.

## FACTS

Ventura Farms, a sole proprietorship, hired an attorney, Mr. Ralph Catanese, to assist with a property tax appeal. In the course of that litigation, the attorney drafted legislation which would prevent similar property tax problems in the future. The proprietor of Ventura Farms requested the attorney to forward the draft legislation to a member of the Legislature for consideration.

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<sup>1/</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.

Although the proprietor of Ventura Farms had not authorized the attorney to do so, Mr. Catanese contacted members and staff of the Legislature concerning the proposal, and testified before a legislative committee. In addition, staff members at Ventura Farms assisted in the lobbying efforts, although your letter appears to indicate that the staff activities also were not authorized.

The attorney billed Ventura Farms for these services and was paid. During a subsequent review of Ventura Farms' legal bills, the proprietor questioned whether these payments would require Ventura Farms to file disclosure reports as a lobbyist employer. Your letter states that the attorney has been requested and has agreed to return the fees.

#### ANALYSIS

The Act requires lobbyists, lobbying firms and lobbyist employers to file periodic reports disclosing payments made and received in connection with influencing legislative or administrative action. (Sections 86100-86118.) "Lobbyist employer" is defined in the Act as a person who:

(a) Employs one or more lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action, or

(b) Contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable travel expense, for the purpose of influencing legislative or administrative action.

#### Section 82039.5.

In addition, persons who are not lobbyist employers but who spend \$5,000 in a calendar quarter to influence legislative or administrative action must file disclosure reports. (Section 86115(b).) "Influencing legislative or administrative action" is defined in Section 82032 as:

...promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies or analyses.

During your telephone conversation with Kevin Braaten-Moen of the Commission's technical assistance staff, you were advised that Ventura Farms would not be required to file reports as a lobbyist employer because Mr. Catanese's activities were not authorized and he had agreed to return the fees received in connection with his lobbying activities. However, your letter provides additional information which was not provided on the telephone--that other staff members of Ventura Farms participated and assisted Mr.

Catanese in the effort. Although your letter appears to indicate that the employees' lobbying activities also were not authorized, our conclusion that Ventura Farms has no disclosure obligation would be different if the employees who assisted with the lobbying effort are not normally required to obtain authorization when engaging in similar types of activities.

Ventura Farms should review its employees' lobbying activities as well as its normal procedures for authorization of employee activities. If it concludes that the employees were acting within the scope of their normal duties when assisting Mr. Catanese, Ventura Farms must file disclosure reports pursuant to Section 86115(b) if its total payments to influence legislative or administrative action (excluding payments to Mr. Catanese) were \$5,000 or more during any calendar quarter. This would include (1) compensation paid to employees who spent 10 percent or more of their compensated time in a calendar month engaged in lobbying activities, (2) payments in connection with soliciting or urging others to engage in direct communication with a legislative, agency or elective state official, and (3) payments for any other expenses which would not have been incurred but for Ventura Farms' activities to influence legislative or administrative action. (Regulation 18616.)

Please do not hesitate to contact me at (916) 322-5662 if you have additional questions.

Sincerely,

Diane M. Griffiths  
General Counsel



By: Carla J. Wardlow  
Political Reform Consultant

STRADLING, YOCCA, CARLSON & RAUTH

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

660 NEWPORT CENTER DRIVE, SUITE 1600

POST OFFICE BOX 7680

NEWPORT BEACH, CALIFORNIA 92660-6441

TELEPHONE (714) 640-7035

JOHN E. BRECKENRIDGE  
RENA C. STONE  
OF COUNSEL

TELECOPIER  
(714) 640-7332  
(714) 640-7335

FRITZ R. STRADLING  
NICK E. YOCCA  
C. CRAIG CARLSON  
WILLIAM R. RAUTH III  
K. C. SCHAAF  
RICHARD C. GOODMAN  
JOHN J. MURPHY  
THOMAS P. CLARK, JR.  
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V. ALAN BERGFELD  
JOEL H. GUTH  
JULIE M. McCOY\*  
LAWRENCE B. COHN  
LAWRENCE W. HORWITZ  
FREDERICK A. BRYSON  
MICHAEL D. MISNER  
JOHN D. STEINBERG

\* MEMBER OF TEXAS BAR ONLY

September 16, 1987

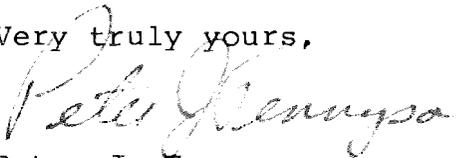
Diane M. Griffiths, Esq.  
California Fair Political  
Practices Commission  
P. O. Box 807  
Sacramento, California 95804-0807

Re: Your File No. A-87-209

Dear Ms. Griffiths:

Thank you for your letter of September 1, 1987. Ventura Farms has been returned the full amount of Mr. Catanese's unauthorized work, in the form of a credit against fees for trial work. It also reviewed other employee involvement and has determined no employee spent 10 percent of his or her time in "lobbying" or legislative activities, and that any expenditures other than fees to Mr. Catanese (such as postage or telephone calls) were substantially less than \$5,000.

Very truly yours,



Peter J. Tennyson

PJT:j

# STRADLING, YOCCA, CARLSON & RAUTH

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## ATTORNEYS AT LAW

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NEWPORT BEACH, CALIFORNIA 92660-6441  
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\*MEMBER OF TEXAS BAR ONLY

July 31, 1987

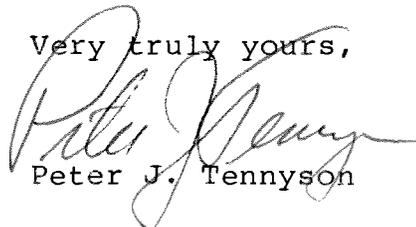
Ms. Jeanne Pritchard  
Chief, Division of Technical  
Analysis and Assistance  
Fair Political Practices Commission  
428 "J" Street, Suite 700  
Sacramento, California 95814

Dear Ms. Pritchard:

I appreciate the assistance of you and your staff earlier this week in helping to analyze and understand the issues presented in the accompanying letter. You may, if you wish, seek confirmation of the facts stated in the letter from T. Randolph Catanese, Esq. of Catanese & Triplett, 325 E. Hillcrest Drive, Suite 220, Thousand Oaks, CA 91360.

Mr. Catanese has agreed in a conversation with me to refund the fees which were allocated on his statements to "lobbying" activity, and to charge Ventura Farms only for the property tax appeal which is presently in litigation in the Ventura County Superior Court. Should you require any other information than that stated in the enclosed letter, please contact me at your convenience.

Very truly yours,

  
Peter J. Tennyson

PJT:j

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July 31, 1987

\* MEMBER OF TEXAS BAR ONLY

Ms. Jeanne Pritchard  
Chief, Division of Technical  
Analysis and Assistance  
Fair Political Practices Commission  
428 "J" Street, Suite 700  
Sacramento, California 95814

Dear Ms. Pritchard:

I am writing to confirm the advice of the staff in connection with matters I discussed by telephone with the staff on Monday, July 27, 1987. Our client, Ventura Farms, a sole proprietorship, hired an attorney, Mr. Randolph Catanese, to assist with a property tax appeal. In the course of that litigation, the attorney representing the client indicated that ambiguities existed in certain California statutes and suggested that statutory revision would be an appropriate way to prevent problems of the nature involved in the personal property tax dispute from arising in the future. In addition, the attorney recommended certain additional legislation as a means of assisting with future tax-and business-related issues, drafted proposed bills and showed them to the client. The client liked the concept of new legislation and requested the attorney to forward his draft to a member of the legislature for consideration.

Following the delivery of the proposed legislation to a member of the California Assembly, it appears that the attorney in question attempted to promote the passage of the legislation. His activities included contacting members of the Assembly and the Senate and their staffs, corresponding with them concerning the meaning and intended purpose of the legislation, and testifying before the Governmental Affairs Committee. Although certain staff members at Ventura Farms assisted in these efforts, these "lobbying" efforts were not authorized by the proprietor of Ventura Farms. The attorney in question rendered bills for his services in connection with the legislation, which were approved and paid by the staff.

Ms. Jeanne Pritchard  
July 31, 1987  
Page Two

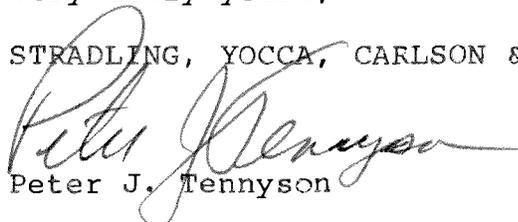
The foregoing matters came to light during a review of the legal bills paid by Ventura Farms. The client had not intended to authorize his attorneys to engage in lobbying on his behalf and was unaware of the scope of the activity undertaken. Had he been aware of the activity, he would not have authorized it and would have refused payment of the invoices. For the month of April, it appears that \$1,125 was expended in client-authorized activity, including drafting proposed legislation. In the month of May, it appears that \$7,025 in fees and \$504.52 in expenses were billed to the legislative activity, but had not been authorized. Approximately \$824.50 was billed in June for services the client had not requested, and was paid.

After the senior members of the staff of Ventura Farms became aware of these payments, they sought our advice concerning whether the proprietor had inadvertently become a "lobbyist employer" and whether the lawyer had become a "lobbyist" under the meaning of those terms in the Political Reform Act of 1974. We sought advice from the staff because, even though the client had not authorized the expenditures in question, he did not wish to violate the Act's requirements by failing to report payments made by his staff. However, since the attorney in question has never registered as a lobbyist and would be unable to attach an authorization form from the client in the event he did choose to register and report, it was unclear what the client's obligations were. The attorney has been contacted and has acknowledged that the expenditures in question were not authorized and has agreed to return them.

Based on our conversations and on the foregoing facts, we have concluded that neither Ventura Farms nor its proprietor should be required to register as the employer of a lobbyist because the attorney was not properly entitled to receive or retain the amounts charged for activities intended to influence legislative action and has agreed to return them. A review of the company's records indicates that it has not otherwise made expenditures in connection with attempts to influence legislative or administrative action which would require it to report as the employer of a lobbyist or as a person spending \$5,000 or more to influence legislative or administrative action. Your concurrence with the positions stated in this letter would be greatly appreciated.

Very truly yours,

STRADLING, YOCCA, CARLSON & RAUTH

  
Peter J. Tennyson

PJT:j



# California Fair Political Practices Commission

August 3, 1987

Peter J. Tennyson  
Stradling, Yocca, Carlson & Rauth  
660 Newport Center Drive, Suite 1600  
Newport Beach, CA 92660-6441

Re: 87-209

Dear Mr. Tennyson:

Your letter requesting advice under the Political Reform Act was received on August 3, 1987 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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

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,

Jeanne Pritchard  
Chief  
Technical Assistance and Analysis  
Division

JP:jaj