



California Fair Political Practices Commission

September 6, 1988

Phillip R. Amen, Personnel Officer
Air Resources Board
P.O. Box 2815
Sacramento, CA 95812

Re: Your Request for Advice
Our File No. A-88-304

Dear Mr. Amen:

You have requested advice regarding the duties of the members of the recently established Advisory Board on Air Quality and Fuels under the conflict of interest code provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Must the recently established Advisory Board on Air Quality and Fuels adopt a conflict of interest code and file statements of economic interests?

CONCLUSION

The members of the Advisory Board on Air Quality and Fuels must adopt a conflict of interest code because its members make or participate in the making of governmental decisions.

FACTS

The Advisory Board on Air Quality and Fuels (the "board") was created in 1987 to evaluate information and provide recommendations to the Legislature regarding to the feasibility of implementing methanol-fueled vehicle production. The board will examine such things as the feasibility and effectiveness of production, sale, and operation of methanol-fueled vehicles;

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

issues related to consumer acceptance of methanol vehicles and the use of methanol fuel; the economics of methanol production and supply; the environmental, public health and safety impacts resulting from the use of methanol fuel and will further examine the use of tax incentives for industry members and consumers. (Health and Safety Code Section 43837.)

The board may select an executive director, approve studies, select contractors and conduct public hearings. (Health and Safety Code Section 43837(d).) The board may also request administrative and staff support from public agencies and may solicit funds and in-kind contributions from public or private sources. (Health and Safety Code Section 43837(f).)

The board shall, not later than one year after appointment of its members, submit a report to the Legislature which includes its findings and recommendations with respect to the environmental and economic impacts and feasibility of the implementation of methanol-fueled vehicle production and methanol availability mandates. (Health and Safety Code Section 43838.)

The board consists of 13 governmental agency members and four public members. One public member will be a representative of the methanol industry; two will be from the domestic motor vehicle industry, one of whom shall represent manufacturers of heavy-duty vehicles or engines; and one member will be a representative of the imported motor vehicle manufacturing industry. (Health and Safety Code Section 48337(c).)

ANALYSIS

Section 87302 provides that conflict of interest codes shall enumerate the designated employees within the agency who make or participate in making decisions which may foreseeably have a material financial effect on any financial interest of the designated employee. Section 82019 defines a designated employee as any officer, employee, member or consultant of any agency who possesses decisionmaking authority. The term "designated employee" does not include any unsalaried member of a board or commission which performs a solely advisory function.

A board possesses decisionmaking authority if:

- (A) It may make a final governmental decision;
- (B) It may compel a governmental decision; or it may prevent a governmental decision by reason of an

exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Regulation 18700(a)(1).

Commission Regulation 18700(b) provides in part that a designated employee makes a governmental decision when he or she is acting within the authority of his or her office, and:

- (1) Votes on a matter;
- (2) Appoints a person;
- (3) Obligates or commits his or her agency to any course of action;
- (4) Enters into any contractual agreement on behalf of his or her agency; or
- (5) Determines not to act, within the meaning of sub-paragraphs (1), (2), (3) or (4).

The board will be examining the impact and feasibility of methanol fueled vehicle production and methanol availability. It will be reporting its findings and recommendations to the Legislature. Any decision to act on the recommendations must be initiated by the Legislature. The Legislature may choose to introduce legislation or it may opt to do nothing with the information it receives from the board. Thus, when presenting its findings and recommendations to the Legislature, the board is not participating in the making of a governmental decision and is acting in a solely advisory capacity. (Regulation 18700(a)(1).)

However, the board also has authority to hire contractors to conduct certain studies. (Health and Safety Code Section 43837(d).) In this capacity, the board is empowered to make governmental decisions. (Regulation 18700(b)(4).)

Accordingly, The Advisory Board on Air Quality and Fuels should be covered by a conflict of interest code and its members would file statements of economic interest once a code is adopted. The conflict of interest code should be narrowly

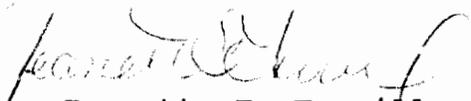
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tailored to the decisionmaking authority of the board.
(Section 87302.)

If you have any questions or wish to discuss this, please
feel free to call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

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AIR RESOURCES BOARD

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SACRAMENTO, CA 95812



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July 29, 1988

Fair Political Practices Commission
Legal Division
P.O. Box 807
Sacramento, CA 95804-0807
Attn: Jeanette Turvill

Dear Ms. Turvill:

Pursuant to our telephone conversation, we are formally requesting a decision as to whether or not members of the recently established "Advisory Board on Air Quality and Fuels" are required to file Statements of Economic Interests.

A copy of Assembly Bill 234 is attached. If you need any assistance, please contact Ernie Bryant at 322-8195.

Sincerely

Handwritten signature of Phillip R. Amen in cursive.

Phillip R. Amen
Personnel Officer

Attachment

Assembly Bill No. 234

CHAPTER 1326

An act to add Section 39037.05 to, and to add and repeal Sections 43837 and 43838 of, the Health and Safety Code, and to add Section 25310.1 to the Public Resources Code, relating to air pollution.

[Approved by Governor September 29, 1987. Filed with Secretary of State September 29, 1987.]

LEGISLATIVE COUNSEL'S DIGEST

AB 234, Leonard. Air pollution: motor vehicle and locomotive emissions.

(1) Under existing law, the State Air Resources Board adopts emission standards for new motor vehicles sold in this state, and certifies new motor vehicles and new motor vehicle engines pursuant to statute.

This bill would create the Advisory Board on Air Quality and Fuels consisting of 17 members. The advisory board would, until January 1, 1993, have specified duties and would be required to report to the Legislature not later than one year after the appointment of its members, on the impacts and feasibility of methanol-fueled vehicle production and methanol availability.

(2) Under existing law, the State Energy Resources Conservation and Development Commission publishes and submits to the Legislature a biennial report describing emerging trends in the use, availability, and pricing of petroleum products and other fuels.

This bill would require the commission to prepare, by September 1, 1988, a report on the expected prices and availability of fuels required for use in low-emission vehicles and to thereafter include in this biennial report information on the expected availability and prices of these fuels, and on other related matters.

(3) The bill would require the state board to conduct a study, in conjunction with the state railroad industry, regarding locomotive emissions, if the study can be conducted with existing resources or from nonstate sources. The study would be conducted under the direction of the Locomotive Emission Advisory Committee, which the bill would create with a specified membership. The bill would require that the study be completed and submitted to the Legislature and the Governor. The bill would also authorize the conduct of a demonstration project based on the study and the committee's findings.

The people of the State of California do enact as follows:

SECTION 1. Section 39037.05 is added to the Health and Safety Code, to read:

39037.05. "Low-emission motor vehicle" means a motor vehicle which has been certified by the state board to meet all applicable emission standards and meets one of the following additional requirements:

(a) Is capable of operating on methanol, as determined by the state board, and will have an adverse impact on ambient air quality standards for ozone no greater than a vehicle which meets the requirements of subdivision (c).

(b) Is capable of operating on any available fuel other than gasoline or diesel and, in the determination of the state board, will have an adverse impact on ozone air quality no greater than a vehicle operating on methanol.

(c) Operates exclusively on gasoline and is certified to meet a hydrocarbon exhaust emission standard which is at least twice as stringent as otherwise applicable to light-duty gasoline vehicles.

SEC. 2. Section 43837 is added to the Health and Safety Code, to read:

43837. (a) The Advisory Board on Air Quality and Fuels is hereby created in state government.

(b) The purposes of the advisory board shall include all of the following:

(1) Provide an independent group of public and private individuals to assemble and evaluate information, and provide judgments and recommendations with regard to the necessity and feasibility of the implementation of methanol-fueled vehicle production and methanol availability mandates.

(2) Examine the technological feasibility and cost effectiveness of the mandated production, sale, and operation of methanol capable and dedicated methanol-fueled vehicles by public and private fleet operators and by the public, and of the phased conversion, expansion, or improvement of the motor vehicle fuel transport, storage, and distribution infrastructure to methanol compatibility, in comparison to other available air quality strategies.

(3) Examine issues related to consumer acceptance of methanol vehicles and the use of methanol fuel, including vehicle performance and durability, fuel and vehicle pricing, vehicle resale, the availability and the convenience of fuel supply and distribution, relative to other control technologies and fuels.

(4) Examine issues related to the economics of methanol production and supply, including anticipated price differentials between methanol, gasoline, and diesel at the wholesale and retail levels, projected methanol production capacity and primary raw materials sources, quantities, and cost, and the impact of methanol substitution on the state's energy security compared to other available options for reducing vulnerability to petroleum supply interruptions and rapid price increases.

(5) Examine the relative environmental, and public health and safety impacts and tradeoffs resulting from the substitution of

methanol fuel, compared to other alternative fuels, technologies, and vehicles, including all of the following:

(A) The effect on vehicular and nonvehicular emissions, ambient air quality, and visibility.

(B) Public exposure and environmental contamination from toxic substances associated with fuels, including formaldehyde, benzene, methanol, and gasoline.

(C) Safety and fuel handling and storage issues.

(6) Examine the effectiveness of tax incentives for both industry and consumers and for government purchases of methanol fuel in facilitating the transition to increased use of methanol fuel.

(c) The advisory board shall consist of 17 members, of whom four shall be public members, two appointed by the Senate Committee on Rules, and two appointed by the Speaker of the Assembly. The Governor shall appoint the following 13 members of the commission and designate the chairperson:

(1) The Secretary of Environmental Affairs.

(2) The Secretary of the Business, Transportation and Housing Agency.

(3) The Chairperson of the State Energy Resources Conservation and Development Commission.

(4) The chairperson of the south coast district and a representative from a district in a nonattainment area.

(5) Three representatives of the California petroleum fuel industry.

(6) One representative of the methanol industry.

(7) Two representatives of the domestic motor vehicle manufacturing industry, one of whom shall represent manufacturers of heavy-duty vehicles or engines.

(8) One representative of the imported motor vehicle manufacturing industry.

(9) The Director of Food and Agriculture.

The advisory board may appoint additional ex officio members.

(d) The advisory board may select an executive director, approve study protocols, let contracts, including selection of contractors, and conduct public hearings.

(e) The chairperson of the advisory board may oversee the day-to-day operations of the advisory board, chair meetings, appoint a vice chairperson, appoint special task forces as necessary, establish the agenda, and schedule meetings.

(f) The advisory board may request assistance from the state board, the State Energy Resources Conservation and Development Commission, the south coast district, or other public bodies for administrative services and staff support, and these agencies may provide these services, to the extent they determine is feasible, within existing budgetary resources. The advisory board may solicit funds from other public or private sources, and may accept private and public in-kind contributions, including technical and

professional support, to accomplish the purposes of this chapter. The advisory board shall report on the sources and amounts of funds or contributions received.

(g) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 3. Section 43838 is added to the Health and Safety Code, to read:

43838. (a) Not later than one year after the appointment of its members, the Advisory Board on Air Quality and Fuels shall submit a report to the Legislature which includes its findings and recommendations with respect to the environmental and economic impacts and feasibility of the implementation of methanol-fueled vehicle production and methanol availability mandates.

(b) Nothing in Section 43837 or this section limits the existing authority of the state board, any district, or the State Energy Resources Conservation and Development Commission to adopt regulations relating to low-emission vehicles or low-emission fuels.

(c) This section shall remain in effect only until January 1, 1993, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1993, deletes or extends that date.

SEC. 4. Section 25310.1 is added to the Public Resources Code, to read:

25310.1. The commission, in cooperation with the State Air Resources Board, shall prepare, by September 1, 1988, a report on the expected availability and prices of fuels which are anticipated to be required for use in low-emission motor vehicles using methanol or other clean-burning fuels and shall thereafter include, in its biennial report prepared under Section 25310, information on the expected availability and prices of those fuels.

The report shall include an assessment of the relative cost to users, compared to gasoline, of these fuels. The report shall also recommend to the Legislature any changes needed to ensure that these fuels are used to the greatest extent practicable. This information shall be included in the 1989 biennial report and in each report thereafter.

The 1991 and later biennial reports shall include an assessment of the success of the introduction, prices, and availability of these fuels.

SEC. 5. (a) The State Air Resources Board shall conduct a study to be undertaken jointly by the board and the California railroad industry, if it can be done with existing resources or from nonstate sources. The study shall include a survey of past research into the subject of railroad locomotive emissions, a review of present locomotive emissions, current technology available to reduce those emissions, a cost-benefit analysis regarding the economic impact on the railroad industry of utilizing present and proposed technology, and consideration of public and employee safety issues that may result with the use of these technologies. The board and the railroad

industry shall also study existing and proposed technologies that are economically feasible and practical for the industry to implement in order to contribute to a reduction of railroad locomotive emissions. A demonstration project may be conducted, based on the study, only if the Locomotive Emission Advisory Committee, created pursuant to subdivision (b), has found in the study sufficient reasons to believe that a demonstration project is likely to result in findings that locomotive emission regulation would have significant air pollution benefits and would be cost-effective and safe. The use of consulting, research, and testing firms to assist in any study or demonstration shall be subject to consultation between the board and railroad industry representatives.

(b) The study and any demonstration project shall be directed by, and study recommendations and any project report adopted by, the Locomotive Emission Advisory Committee composed of the following nine persons:

(1) The Secretary of Environmental Affairs or the secretary's designee.

(2) The Chairman of the State Energy Resources Conservation and Development Commission or the chairman's designee.

(3) The Secretary of the Business, Transportation and Housing Agency or the secretary's designee.

(4) One representative each from one northern California and one southern California air pollution control district or air quality management district in nonattainment areas.

(5) One representative from each of the four major operating railroads in this state.

(c) The draft study, with recommendations, shall be submitted to the Governor and the Legislature not later than July 1, 1989. The final study, with recommendations, shall be submitted to the Governor and the Legislature not later than January 1, 1990. If a demonstration project is conducted, the project and a subsequent report to the Governor and the Legislature shall be completed and submitted not later than January 1, 1993.

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