

August 1, 2014

Mary Weaver  
Legal Research Analyst  
9800 Crosspoint Blvd, Suite 300  
Indianapolis, IN 46256

Re: Your Request for Advice  
**Our File No. A-14-127**

Dear Ms. Weaver:

This letter responds to your request for advice on behalf of your firm, First Advantage, regarding the lobbying provisions of the Political Reform Act (the "Act"). Please note that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. Further, this letter is based on the facts as they have been presented to us; the Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

### **QUESTION**

Are individuals employed by First Advantage who provide businesses with assistance in obtaining California Competes Tax Credit required to register as lobbyists?

### **CONCLUSION**

Based on the facts you have provided, employees of First Advantage who provide assistance to businesses to obtain California Competes Tax Credits do not meet the Act's definition of "lobbyist."

### **FACTS**

Your firm, First Advantage, a business consulting firm that provides support services including human resources, employee screening, legal and information solutions, is based in Alpharetta, Georgia.

First Advantage will employ one or more persons to work on behalf of businesses applying for California Competes Tax Credits through the Governor's Office of Business and Economic Development ("GO-Biz"). GO-Biz was created to serve as California's single point

of contact for economic development and job creation efforts. It offers a range of services to business owners including attraction, retention and expansion services, site selection, permit streamlining, clearing of regulatory hurdles, small business assistance, international trade development, and assistance with state government.

GO-Biz includes the Business Investment Services Unit (“CalBIS”), which works with companies to expand their presence in California by streamlining the site selection process and offsetting the cost of doing business with the use of local, state and federal incentives.

CalBIS provides no-fee, tailored site selection services to employers, corporate real estate executives, and site location consultants who are considering California for relocation and/or expansion. CalBIZ offers an incentive program, the California Competes Tax Credit, to businesses that want to come to California or stay and grow in California. This program is statewide and there are no geographic restrictions. Tax credit agreements are negotiated by GO-Biz and approved by the California Competes Tax Credit Committee.

Your firm, First Advantage, would represent businesses that are applying for the California Competes Tax Credit program. First Advantage would work as a “go-between” with business and the state. It would help businesses with the application process, help the business navigate the process, and ultimately help the business negotiate a tax credit with GO-Biz.

You wish to know if individuals employed by your firm who provide businesses with this type of assistance must register as lobbyists.

## ANALYSIS

Section 82039, in pertinent part, defines a lobbyist for purposes of the Act as:

“...any individual who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official *for the purpose of influencing legislative or administrative action*, if a substantial or regular portion of the activities for which he or she receives consideration is for the purpose of influencing legislative or administrative action...” (Emphasis added.)

Section 82037 defines “legislative action” as:

“[T]he drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity. Legislative action also means the action of the Governor in approving or vetoing any bill.”

Section 82002 defines “administrative action” as:

“The proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or other action in any ratemaking proceeding or any quasi-legislative proceeding...”

Further, the term “influencing legislative or administrative action” is defined in Section 82032 to include:

“Influencing legislative or administrative action means 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.”

Under the Act, “legislative action” pertains only to bills and other matters before the State Legislature. (*Bagatellos* Advice Letter, I-91-202.) Additionally, meeting with GO-Biz agency officials to help individual businesses file applications and to “negotiate a tax credit” under the California Competes Tax Credit program, where your firm’s employee does not propose, support, or oppose the drafting of rules, regulations or ratemaking proceedings would not be considered “influencing administrative action.”

Therefore, based on the facts you provided, employees of First Advantage who will assist businesses in obtaining a tax credit with GO-Biz would not be “communicat[ing] directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action.”

Accordingly, individuals employed by your firm who provide businesses with this type of assistance are not required to register as lobbyists.<sup>1</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Emelyn Rodriguez  
Counsel, Legal Division

ER:jgl

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<sup>1</sup> Please note, however, that even gifts provided by non-lobbyists may be subject to the Act’s gift limits. Under the Act, both persons making gifts over the \$440 gift limit and those officials receiving the gift may be subject to civil penalties under the provisions of Section 89521. (See also Section 89503.)