



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

December 24, 2013

Mr. Dick Ackerman
Nossaman LLP

REDACTED

RE: Advisory Letter
EPPC No. 11/154: Dick Ackerman

Dear Mr. Ackerman:

The Fair Political Practices Commission (“Commission”) enforces the provisions of the Political Reform Act (the “Act”) found in Government Code Section 81000, and following. As you are aware, the Commission initiated an investigation regarding the allegation that you may have violated the legislative one-year ban and were required to register as a lobbyist for your activities regarding the sale of the Orange County Fairgrounds. The Enforcement Division has determined that there is insufficient evidence to find that you violated the Act in this particular circumstance. Therefore, we have decided to close this matter with an Advisory letter.

For a period of one year after leaving state employment, the Section 87406, subdivision (b), prohibits former Legislators from being paid to communicate with or appear before their former agency for the purpose of influencing legislative action. The foregoing statute is commonly referred to as the “one-year ban” prohibiting California State Legislators from communicating with the Legislature to influence legislative action. “Influencing legislative or administrative action” includes influencing by any means, including but not limited to the provision or use of information, statistics, or analyses. (Section 82032.) Section 82037 defines “legislative action” as “the 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.”

Communications restricted by the one-year ban include any formal or informal appearance or oral or written communication made to influence legislative action. (Section 87406, subd. (d)(1).) These communications include, but are not limited to, conversing directly or by telephone, corresponding by writing or e-mail, attending a meeting, and delivering or sending any communication. (Regulation 18746.2, subd. (a).) A

communication is considered to be for the purpose of influencing legislative action “if it is made for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing the action...” (Regulation 18746.2, subd. (a).)

In addition, an individual must register as a lobbyist if their activity meets either of the two tests found in Section 82039. You either receive two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or your principal duties as an employee are, to communicate directly or through your agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action.

Our investigation revealed that throughout June and July, 2009, you, within one year of leaving state employment and for compensation, had telephone conferences and in person contacts with members of the State Senate and Assembly, on behalf of your employer, the Orange County Fair and Event Center Board, for the purpose of obtaining information and providing information regarding legislation relating to the sale of the Orange County Fairgrounds in the City of Costa Mesa. Although the idea to sell surplus property had been touted by the Governor for years, it was not until July 23, 2009, that a budget bill, ABX4 22, was amended to specifically include the sale of the Orange County Fairgrounds. Then, just two days later on July 25, 2009, the bill was passed out of the Legislature and sent to the Governor’s desk.

According to your billing records, you had telephone conferences with two Members of the Legislature during this three day period. Since you were employed to act as a liaison between the Orange County Fair and Event Center Board and the Legislature, along with your other duties, and the legislation to sell the fairgrounds was pending, this activity creates the appearance of a violation of the one-year ban on influencing your former colleagues of the Legislature. However, the investigation did not reveal evidence that your contacts rose to the level of “influencing legislative action.” Taking all of the facts of this case into consideration, the Enforcement Division has decided to close this matter with this Advisory letter.

Your failure to comply with the provisions of the Act in the future may result in an enforcement action against you, including monetary penalties of up to \$5,000 for each violation. The FPPC publishes forms and manuals to facilitate compliance with the provisions of the Act. You can visit our website at www.fppc.ca.gov. Contact me at (916) 322-5796 with any questions you may have regarding this letter.

Sincerely,

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Galena West
Commission Counsel IV
Enforcement Division