FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 8, 2014

Mr. Keith Graham
[redacted]

Advisory Letter Re: FPPC No. 14/633

Dear Mr. Graham:

The Fair Political Practices Commission (FPPC) enforces the provisions of the Political Reform Act (Act).[1] This letter is in response to a non-filer referral from the California Secretary of State's office (SOS) that alleged you violated the Act's lobbyist reporting provisions. After review of the referral, the Enforcement Division has decided to close its file on this matter without initiating an enforcement action against you. The basis for this decision follows:

Under Section 86113 of the Act, lobbyists[2] must complete and verify a Lobbyist Report (Form 615) containing all activity expenses incurred and certain contributions made or delivered by the lobbyist during the reporting period. The Form 615 is to be provided to the lobbyist's employer[3] or lobbying firm[4] within two weeks following the end of each calendar quarter. (§ 86113.) The Form 615 is to be filed with SOS as an attachment to the Report of Lobbying Firm (Form 625), pursuant to Section 86114, or Report of Lobbyist Employer (Form 635), pursuant to Section 86116, by the times specified in Section 86117 and in the manner required by Sections 86118 and 84605.

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[1] The Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the FPPC are contained in Sections 18110 through 18997 of Title 2, Division 6 of the California Code of Regulations.

[2] For purposes of the Act, "Lobbyist" includes an individual:

(1) Who receives $2,000 or more in compensation in a calendar month for engaging in direct communication with a qualifying official for the purpose of influencing legislative or administrative action. [§ 82039 (a)(1), Reg. §§ 18239 (a)(1), (b)]

(2) Whose principal duties as an employee (spending one-third or more of their paid work-time/month) are to engage in direct communication with a qualifying official for the purpose of influencing legislative or administrative action. [§ 82039 (a)(1); Reg. §§ 18239 (a)(2), (c)]

(3) Who was hired by an external manager to solicit, market, consult, broker or act as an intermediary in connection with the offer or sale of securities, assets, or services of an external manager to a state public retirement system in California or an investment vehicle. [§§ 82039 (a)(2), 82047.3, 82025.3; Reg. § 18239 (a)(3)]

[3] For the definition of a "lobbyist employer," see § 82039.5 and Reg. § 18239.5.

[4] For the definition of a "lobbying firm," see § 82038.5 and Reg. § 18238.5.

Thus, under the law as it is presently written, you, as the lobbyist, do not have the specific obligation to file your Form 615 with SOS. Instead, the failure to file is ascribed to the Firm or Employer for whom you lobby.

In this instance, the FPPC has completed its investigation of the facts and found that Advent Capital Management, LLC failed to timely file a Report of Lobbyist Employer (Form 635 attaching your Form 615) with SOS for the following quarters:

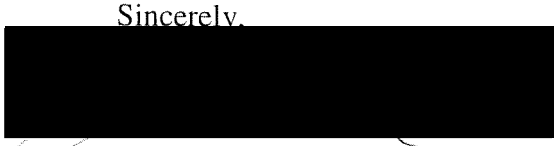
– October 1, 2013 through December 31, 2013 (due January 31, 2014)
– January 1, 2014 through March 31, 2014 (due April 30, 2014)
– April 1, 2014 through June 30, 2014 (due July 31, 2014)

While their actions violated the Act because they failed to file the aforementioned report(s) with SOS by the specified deadline(s), the obligation to *file* your Form 615 with SOS is not directly attributable to you. As such, we are closing your case with this advisory letter.

You are, however, required to complete, verify, and provide the original of your Form 615 to your employer or firm within two weeks following the end of each calendar quarter. Should evidence become available establishing that your firm or employer was prepared to file their report but you failed to provide your Form 615 in a timely fashion, the information in this case will be retained and may be used against you. Please be advised that any future failure to comply with the provisions of the Act could result in an enforcement action.

If you have further questions regarding this letter, please contact Bryanna Brandalesi at (916) 322-7050.

Sincerely,



Gary S. Winuk
Chief, Enforcement Division

cc: California Secretary of State, Political Reform Division
Advent Capital Management, LLC

GSW:tf:bb