BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: Opinion requested by John C. Morrissey, General Counsel, Pacific Gas and Electric Company	No. 75-120 August 3, 1976

BY THE COMMISSION: We have been asked the following question by John C. Morrissey, General Counsel of Pacific Gas and Electric Company:

Does the term "consultant," as used in the definition of "agency official" and "legislative official" refer only to an employee of the State of California having the job title of "Consultant," or does it include a person who provides consultation services to the Legislature or a state agency under independent contract?

CONCLUSION

The term "consultant," as used in the definitions of "legislative official" and "agency official," includes any natural person who, under contract, provides information, advice, recommendation or counsel to the Legislature or a state agency, but does not include a person who:

> (A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the control and direction of the agency or of any agency official, other than normal contract monitoring; and
>
> (B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Government Code Sections 82038 and 82004; 2 Cal. Adm. Code Section 18700(a)(2).

ANALYSIS

Pacific Gas & Electric Company ("PG&E") is the employer of lobbyists and, therefore, files periodic disclosure reports pursuant to Government Code Sections 86108(a) and 86109.[1/] Under Section 86109(e), PG&E must report exchanges with business entities which total one thousand dollars or more in a calendar year if a legislative official or agency official is a proprietor, partner, director, officer, manager, or has more than a fifty percent ownership interest in the business entity.[2/]

PG&E retains numerous consultants and consulting firms. One of these firms, Louis A. Allen Associates, Inc., has indicated that Ralph B. Bettman, a managing principal of the firm, provides "management development counsel to several State of California agencies." PG&E seeks to ascertain whether or not transactions with Louis A. Allen Associates, Inc., must be disclosed under Section 86109(e).

1/ All statutory references are to the Government Code unless otherwise noted.

2/ Section 86109(e) requires the lobbyist employer to disclose:

> The name and address of any business entity in which the person making the report knows or has reason to know that an elective state official, legislative official, agency official or state candidate is a proprietor, partner, director, officer, manager, or has more than a fifty percent ownership interest, with whom the person making the report has engaged in an exchange or exchanges of money, goods, services or anything of value and the nature and date of each such exchange and the monetary value exchanged, if the total value of such exchanges is one thousand dollars ($1,000) or more in a calendar year.

We understand the term "managing principal" to mean that Mr. Bettman is a "proprietor, partner, director, officer, manager or has more than a fifty percent ownership interest." Thus, if Mr. Bettman is a legislative or agency official of an agency that PG&E is influncing or attempting to influence (see 2 Cal. Adm. Code Section 18600), PG&E must report exchanges with Louis A. Allen Associates, Inc., totaling more than $1,000 in a calendar year.[3/]

The term "legislative official" is defined in Section 82038 to mean "any employee or consultant of the Legislature whose duties are not solely secretarial, clerical or manual." (Emphasis added.) Similarly, "agency official" is defined in Section 82004, which provides that:

> "Agency official" means any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any administrative action in other than a purely clerical, secretarial or ministerial capacity.
>
> (Emphasis added.)

Arguably, the phrase "consultant of the Legislature" could be limited to include only a person who is employed by the State of California and who works for members of the Legislature and legislative committees. Legislative consultants are chosen by legislators and approved by the Rules Committee of the Senate or Assembly. Similarly, "consultant of any state agency" could be limited to those special consultants who are hired to work with a state agency for periods up to nine months. The job specifications for a "special consultant" are established by the personnel board and special consultants are hired subject to the approval of the personnel board.[4/]

However, construing the term "consultant" to include only legislative consultants and special consultants to a state agency would mean that the statute is unnecessarily verbose.

[3/] The reporting requirements imposed by Section 86109(e) also apply to elected state officers and state candidates. We have no reason to believe that Mr. Bettman is either an elected state officer or a state candidate.

[4/] See California State Personnel Board Specification: Special Consultant: Schematic Code LE40, Class Code 4660.

The definitions of "legislative official" and "agency official" include "any employee or consultant." Sections 82004, 82038. (Emphasis added.) Thus, legislative consultants and special consultants to an agency come within the definition of legislative official and agency official by reason of their status as employees of the Legislature and the state agency, respectively, and regardless of whether they are "consultants." It is a fundamental rule of statutory interpretation that a statute should be interpreted to give effect to each word. Select Base Material, Inc. v. Board of Equalization, 51 Cal. 2d 640 (1959). Consequently, we conclude that the term consultant of a state agency and of the Legislature cannot be interpreted to include only those persons who are employees of the State of California having the job title of consultant.

On the other hand, we do not believe that the terms "agency official" and "legislative official" should be read to include every consultant retained by state agencies and the Legislature. The term agency official is limited to persons who participate in any administrative action in other than a purely clerical, secretarial or ministerial capacity. Similarly, the definition of legislative official excludes those persons whose duties are solely secretarial, clerical, or manual. Clearly, these definitions are intended to limit the provisions of Chapter 6 to those persons who participate in governmental decisions, and who may be influenced improperly by the actions of lobbyists and their employers. In light of these considerations, and the obvious advantages of consistent statutory interpretation, we conclude that the term "consultant" as used in the definitions of "agency official" and "legislative official" should be defined in the same way that we have defined "consultant" as used in the definition of "public official," Section 82048.

In regulations adopted to interpret the conflict of interest provisions of the Political Reform Act, we have defined "consultant" to include:

> ... [A]ny natural person who provides, under contract, information, advice, recommendation or counsel to a state ... agency, provided, however, that "consultant" shall not include a person who:
>
> (A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation or counsel independent of the

> control and direction of the agency or of any agency official, other than normal contract monitoring; and
>
> (B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.
>
> 2 Cal. Adm. Code Section 18700(a)(2)

Accordingly, in general a "consultant" who furnishes information, advice, recommendations or counsel to an agency or the Legislature, but who is independent of the control and direction of the governmental body and who possesses no authority with respect to any governmental decision, will not be an agency official or a legislative official.

In this opinion request, we have not been given enough information to determine whether Mr. Bettman is an "agency official" by virtue of his company's activities in providing management counsel to several state agencies. If, however, he is truly an independent contractor who functions independently of the agency and does not possess authority with respect to agency decisions, he is not an agency official.

Even if Mr. Bettman is an agency official, PG&E, in order to satisfy the reporting obligations imposed by Section 86109, will have to disclose exchanges with Mr. Bettman's firm only if it knows that he is an agency official or if this information would be obtained in the ordinary course of business. Pursuant to 2 Cal. Adm. Code Section 18650(c), exchanges reportable under Section 86109 include only exchanges with persons and business entities known to be "specified persons" or "specified business entities" on the basis of information in the possession of the filer at the time of filing; and there is no requirement that specific inquiry concerning the status of persons or business entities be made unless such inquiry would be made in the ordinary course of business.[5/]

5/ The term "specified persons" includes agency officials and legislative officials, and the term "specified business entity" includes business entities in which agency officials or legislative officials are partners, directors, officers, managers, or more than fifty percent owners. 2 Cal. Adm. Code Section 18650(a)(2).

Furthermore, PG&E must disclose exchanges only with those agency officials who serve in agencies that the PG&E lobbyist or the company has influenced or attempted to influence. This is because, pursuant to regulations adopted by the Commission, reporting obligations imposed on PG&E by reason of Section 86108 extend only to agencies which are or should be listed on the PG&E lobbyist's registration statement, 2 Cal. Adm. Code Section 18600(a), and to agencies whose administrative actions PG&E has influenced or attempted to influence in the manner described in section 86108(b), 2 Cal. Adm. Code Section 18600(b).[6/]

Although we do not have sufficient information to determine whether PG&E is required to report its contract with Louis A. Allen Associates, Inc., this opinion sets forth guidelines which should enable PG&E to determine whether consulting contracts with Allen Associates should be reported. In addition, PG&E should apply the same guidelines to determine whether the company must report contracts with any of the other consultants and consulting firms that PG&E retains.

Approved by the Commission on August 3, 1976. Concurring: Carpenter, Lapan, Lowenstein; Commissioner Brosnahan concurs in conclusion only. Dissenting in Part: Quinn.

Daniel H. Lowenstein
Chairman

6/ We observe that reporting obligations based on activities encompassed by Section 86108(b) can exist regardless of whether the PG&E lobbyist is involved in those activities, since these reporting obligations are independent of those imposed by Section 86108(a).

QUINN, COMMISSIONER, DISSENTING IN PART:

I dissent. The majority in this opinion leaves the clear implication that the employer of a lobbyist may have to report its exchanges with a private consultant, who is also an agency or legislative official within the meaning of Government Code Sections 82004 and 82038, even if there is no connection or nexus between the governmental duties of the consultant and matters which the filer is attempting to influence. This conclusion could lead to requiring the reporting of irrelevant data on exchanges between two private businesses merely because both have some relationship with the state. Requiring one firm to disclose a business transaction with another firm merely because the first firm retains a lobbyist or may be influencing administrative action and the second firm has consultant contracts with the Legislature or state agencies is imposing a reporting requirement which bears little relationship to any legitimate statutory purpose.

The Political Reform Act requires a massive amount of reporting of exchanges between lobbyists, their employers and agency and legislative officials. A prerequisite for reporting should be the existence of some connection between the filer and the agency or legislative official. In this opinion the connection is vague, if indeed it exists at all.

The disclosure goals of the Political Reform Act will better be served if Government Code Sections 86108 and 86109, which set out periodic reporting requirements, are read narrowly so that only relevant exchanges must be reported. An exchange between two business firms should only be a reportable exchange in the case in which one firm or its managerial personnel is an agency or legislative official and the second firm is attempting to influence in some way the general governmental conduct engaged in by the first firm. I believe this is the standard implied by Sections 86108(a) and (b) and Section 86109(e), and that to require otherwise broadens exchange reporting responsibilities for private entities far beyond what is intended by the Political Reform Act.

T. Anthony Quinn
Commissioner