

Memorandum

To : Advice Files 76-596 and 76-604

Date : June 13, 1984

From : FAIR POLITICAL PRACTICES COMMISSION - Legal Division
Diane Maura Fishburn

Subject: Validity of this Advice

This advice letter came to our attention in a recent Legal Division meeting, and all present expressed concern that we gave out this advice. If you have come across a similar situation, please bring it to an Advice Request meeting for consideration. We might want to reverse this advice.

86300(a)

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

June 8, 1976

Mr. John F. Duffy, Sheriff
San Diego County
P. O. Box 2991
San Diego, CA 92112

A-76-604

Re: Opinion Request
No. 76-063

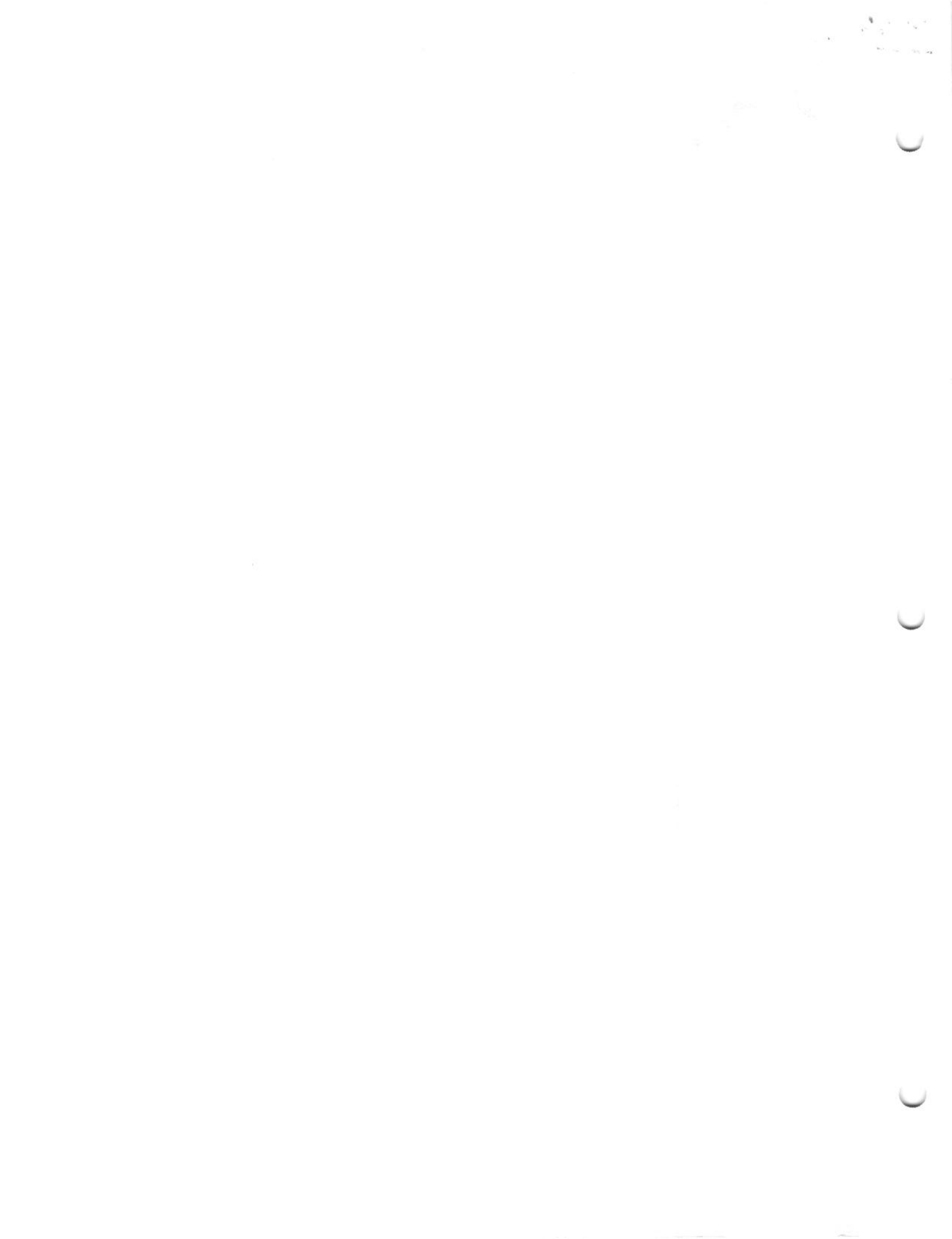
Dear Mr. Duffy:

Thank you for your letter of April 29 requesting an opinion of the Fair Political Practices Commission concerning the coverage of Government Code Section 86300(a). Because your request does not pose a substantial question of interpretation under the Political Reform Act, no formal opinion will be issued. However, I hope the following informal comments will be helpful.

Specifically, you have inquired whether an employee in your department who engages in lobbying activities on your behalf falls within the exemption from the requirements of Chapter 6 applicable to "any public official acting in his official capacity." Government Code Section 86300(a). In your subsequent letter of May 18, 1976, you stated that the employee in question:

... is authorized to participate in direct communication with state legislators only at my direction and is not authorized to take or express any position regarding legislation other than that which I direct. The Confidential Assistant is not authorized to negotiate amendments to any bill without my approval and only then at my direction In the vast majority of instances the Confidential Assistant's function consists solely of drafting for my signature correspondence to legislators outlining my position on certain bills and asking for their support or opposition. I reiterate that the Confidential Assistant is only authorized to communicate with the legislature either verbally or by correspondence at my direction.

Under these circumstances, it would appear that the employee is, in effect, acting as your alter ego and, therefore, is



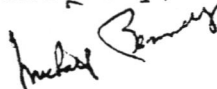
John F. Duffy
June 8, 1976
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entitled to the exemption provided by Government Code Section 86300(a). You apparently exercise complete control over the employee's lobbying activities, directly supervise those activities on a continuing basis and merely use the employee, in effect, as a messenger to communicate your own views concerning legislative or administrative action. Given this degree of control, it is consistent with the purposes of the Political Reform Act to conclude that the exemption applicable to the elected public official also is applicable to the employee who executes your direct orders.

I want to caution you, however, that my remarks in this letter are limited to the specific facts upon which they are based and that nothing in this letter should be construed to conflict with, or in any way to supersede, the Commission's opinion in response to a request by John Witt, 1 FPPC Ops. 1 (No. 75-044, Feb. 21, 1975). In that opinion the Commission made it clear that the lobbying provisions of the Political Reform Act are applicable to non-elected local officials and employees. Accordingly, the only reason the employee about whom you inquire is not subject to the lobbying provisions of the Act is because it is clear that you, the elected public official, are doing the lobbying and he is merely a completely supervised functionary.

If you wish to appeal the denial of your opinion request, you may do so pursuant to 2 Cal. Adm. Code Section 18321. If you have any further questions, please contact Kenneth Finney, Chief of the Commission's Legal Division.

Sincerely,



Michael Bennett
Executive Director

MB:plh

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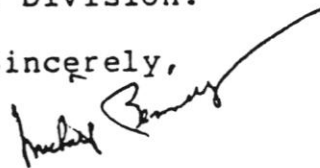
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