

# State of California



# Fair Political Practices Commission

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July 28, 1978

*78-214*

Ms. Betty-Jane Kirwan  
 McCutchen, Black, Verleger & Shea  
 Thirtieth Floor  
 3435 Wilshire Boulevard  
 Los Angeles, CA 90010

Dear Ms. Kirwan:

Thank you for your letter of June 27, 1978 in which you asked our office to confirm prior informal advice given by the Commission's staff with respect to the application of the Political Reform Act's definition of State Agency to the South Coast Air Quality Management District (SCAQMD).

Government Code Section 82049 defines state agency to

...every state office, department, division, bureau, board and commission, and the Legislature, but does not include the courts or any agency in the judicial branch of government.

The Commission has provided by regulation that,

An agency is a state agency within the provisions of Government Code Section 82049 only if all the following criteria are met:

- (a) The agency is authorized by statute, executive order or the California constitution.
- (b) At least one voting member is an elected state officer or is appointed by an elected state officer or an agency official or a state agency.
- (c) The agency is financed in part by any state funds or is subject to appropriation in the state budget.

Ms. Betty-Jane Kirwan  
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(d) An area larger than one county is included  
in its jurisdiction.

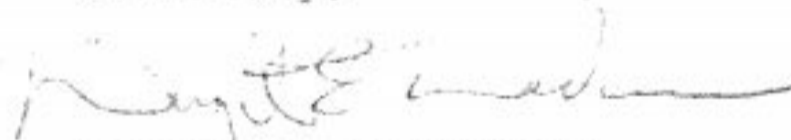
2 Cal. Adm. Code Section 18249

Although SCQAMD satisfies the criteria set forth in the Commission's regulation, certain overriding factors are present which lead to a conclusion by the Commission's staff, that SCAQMD is local in nature and, therefore, is not a state agency. First, most air quality or air pollution districts are limited in their jurisdiction to one county. Second, over 90% of the finances for such districts comes from local funds. Third, the California Air Resources Board (CARB) is the true State agency in the air pollution area. The CARB adopts regulations which supersede all local regulations and bind all local districts including the SCQAMD. Moreover, all variances and permits granted by a local district must be approved by the CARB.

For these reasons, it is the staff's conclusion that SCAQMD is not a state agency. Thus, your client Western Oil and Gas Association need not report expenditures that are made for the purposes of influencing administrative action of the District's Board.

I hope that this information has been helpful. If we may be of further assistance regarding this matter, please do not hesitate to contact our office.

Sincerely,



Dwight E. Dickerson  
Legal Counsel  
Conflicts of Interest Division

DED:nw

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June 27, 1978

Mr. Dwight Dickerson  
Legal Counsel, Conflicts of  
Interest Division  
State of California  
Fair Political Practices Comm.  
P.O. Box 807  
Sacramento, CA 95804

Re: WOGA - Proposition 9

Dear Mr. Dickerson:

This letter concerns our uncertainty whether the South Coast Air Quality Management District ("SCAQMD") is a "state agency" for purposes of reporting contacts with SCAQMD which are intended to influence rule-making activities. We are counsel to the Western Oil & Gas Association ("WOGA"). We advised them that SCAQMD meets all of the criteria in 2 Cal.Admin. Code § 18249 and that WOGA must report whenever it spends \$250 or more in any one month to influence rule-making activities of the Board. We further advised them that payments in connection with quasi-judicial proceedings, such as a variance hearing, need not be reported.

We were recently made aware of a letter you wrote Mr. Reed Hundt, dated May 18, 1978, in which you confirmed oral advice to him that SCAQMD was not a state agency. You enclosed two FPPC staff memoranda on the subject. The memoranda concluded that while SCAQMD met the criteria set forth in the applicable regulation there were competing factors militating against consideration of SCAQMD as a state agency.

Mr. Dwight Dickerson  
June 27, 1978  
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We would appreciate your advice concerning whether this is still the FPPC's view. If so, we will not report WOGA's contacts with SCAQMD in the future.

We look forward to hearing from you soon.

Very truly yours,

*Betty-Jane Kirwan*

Betty-Jane Kirwan  
for McCUTCHEN, BLACK, VERLEGER & SHEA

BJK/fn

**Memorandum**

To : File

Date : Apr. 15, 1977

From : FAIR POLITICAL PRACTICES COMMISSION  
Ted PrimSubject: Whether South Coast Air Quality Management District is  
a State Agency within the meaning of the Political Reform  
Act.

Jim Green of Pacific Lighting Company asked whether the South Coast Air Quality Management District was a State agency within the meaning of Chapter 6 of the Political Reform Act. At the opinion request meeting of March 25, 1977, staff determined that the District was not a State agency.

Commission Regulation 18249 provides that an agency is a State agency only if four criteria are met. The staff determined that the regulation established four minimum criteria for a State agency, but did not mean that all agencies possessing those four criteria necessarily were State agencies. Thus, the staff decided that the South Coast District was local rather than state in nature despite the fact that it fulfilled the four minimum criteria.

Our conclusion was based on the following reasons: First, most air quality or air pollution districts are limited in their jurisdiction to one county. Second, over 90% of the finances for such districts comes from local funds. Third, the California Air Resources Board (CARB) is the true State agency in the air pollution area. The CARB adopts regulations which supersede all local regulations and bind all local districts including the South Coast Air Quality Management District. Moreover, all variances and permits granted by a local district must be approved by the CARB.

For these reasons, the staff concluded that the South Coast Air Quality Management District was a local government agency and I so advised Jim Green of this decision on April 13, 1977.

TP:jo

**Memorandum**

To : File

Date November 8, 1977

From : FAIR POLITICAL PRACTICES COMMISSION  
Ted Prim

Subject: Opinion Requested by Mr. Kinney

One of the questions contained in Mr. Kinney's opinion request related to whether the Bay Area Water Quality Management District was a state agency. The Commission declined to answer this question in an opinion but provided informal advice to the effect that the District was a state agency. We reached this determination because all four criteria set forth in Regulation 18249 were satisfied. In addition, unlike the South Coast Air Quality Management District which also satisfied the four criteria set forth in the Regulation, there were no competing factors suggesting that the agency, nevertheless, should be considered a local government agency.

In the case of the Water Control District, all nine members were appointed by the Governor and all financing is provided by the state. Each district is greater than one county and the regional districts are expressly provided for in state statute as the regional arm of the State Water Resources Control Board.

This is contrasted with the local air quality management districts in several ways. First, most of the air quality districts have jurisdiction in only a single county. The South Coast District has jurisdiction in four counties and, thus, is an exception in this respect. Second, air quality districts are financed primarily from local funds. Only ten percent of a district's funds generally are received from state subvention. Third, all of the members are not appointed by the Governor. Accordingly, we concluded that the air quality districts were essentially local government agencies rather than part of the state agency. We did not find anything to suggest that the same conclusion should be reached with respect to the regional water quality districts.

# Memorandum

To : All Opinion Request Meeting Participants

Date : July 7, 1978

From : FAIR POLITICAL PRACTICES COMMISSION  
Dwight Dickerson

Subject: South Coast Air Quality Management District

Ms. Kirwan's letter accurately reflects the advice given to Mr. Reed Hundt by our staff regarding the application of Regulation 18249 to the South Coast Air Quality Management District. Attached are copies of memoranda which discuss the staff's conclusion with respect to South Coast.

In light of the fact that WOGA and perhaps other groups have been reporting their lobbying activities, should we reconsider our earlier advice? Should 18249 be rewritten to make it clear when an agency is or is not a state agency? You may recall that the staff has had this question before it previously with respect to the Metropolitan Transportation Commission. Given our present interpretation, it still cannot be presumed that an agency is a state agency even if the criteria of 18429 are met. 18249 in its present form can be misread to mean that it is conclusive that an agency is a state agency if all of the criteria set out in 18249 are met.

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attachments