California
Fair Political
Practices Commission

February 28, 1990

R. Brian Kidney
Chief Clerk of the Assembly
State Capitol
Sacramento, CA 95814

Re: Our File No. A-90-171

Dear Mr. Kidney:

At its February 6 meeting, the Fair Political Practices Commission agreed to clarify, through formal written document, interpretation of Section 81012(a) of the Political Reform Act (the "Act").[1] This action was taken in response to concerns raised by members of the Assembly regarding the Commission's application of that provision to pending legislation.

**Section 81012 - Amendments to the Act**

Section 81012 specifies the procedures required to amend or repeal provisions of the Act. Section 81012(a) provides:

> (a) This title may be amended to further its purposes by statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring and signed by the Governor, if at least **12 days prior to passage in each house** the bill **in its final form** has been delivered to the Commission for distribution to the news media and to every person who has requested the Commission to send copies of such bills to him or her.

Section 81012 is a protective mechanism which is meant to allow sufficient time for the Commission, the public and the press to disseminate, digest, discuss, and develop responses to, potential amendments to the Act.

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[1] Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

When the Act was first adopted by the voters, Section 81012 required a 40-day waiting period. At that time the Commission felt it was in its own best interest to provide advice allowing for a "practical" interpretation of the law. In 1976 the Commission provided a letter to the Secretary of the Senate (White Advice Letter, No. 76-239) which advised that Section 81012 allowed a bill to be heard in the house of origin prior to the initial 40-day period, so long as the bill was returned to the house of origin for concurrence or "re-vote."

Perhaps under the 40-day rule, strict application of the law was impractical. However, the Commission believes that that is no legal authority to interpret Section 81012(a) as allowing for any floor vote, in either house, on a bill amending the Act prior to elapse of the statutory waiting period.

The law does not specify that the 12-day waiting period applies only to "final passage" of a bill, as stated in the White Advice Letter (supra). Section 81012 states that the Act may be amended if the bill is delivered to the Commission **12 days prior to passage in each house**. The law specifies, as well, that the bill delivered to the Commission must be **in its final form**. This means the bill must be in print form rather than in "mock-up" or other unofficial form.

Moreover, an interpretation of Section 81012 which would negate application of the 12-day rule in the house of origin raises two major questions. First, the White letter states that a bill may be sent back to the house of origin for a "re-vote" where necessary. Under current law and the rules of the Legislature, there is no opportunity for a "re-vote" on a bill by the house of origin, and there is no precedent for such action. Although the Senate and Assembly could agree to institute such a joint rule, administration would be difficult, and adoption of such a rule would be ill advised.

Finally, the Commission is concerned that a bill which is passed from the first house in violation of the 12-day rule, then passed out of the second house without amendments, and signed by the Governor, would be illegal and unenforceable. It would then be incumbent upon the Commission to challenge the validity of the new law. Such an outcome is inappropriate and illogical, and undercuts the purpose of Section 81012.

The purpose of Section 81012 is to provide sufficient time for members of the public to familiarize themselves with proposed amendments to the Act. The Commission is not authorized to interpret the provisions of the Act to accommodate its own calendar, nor the workings of the Legislature or any other public body. We are sworn to vigorously enforce the Act and to protect the rights of the public at large.

It is with this in mind that the Commission has reached the interpretation of Section 81012 set forth in this letter.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan

Kathryn E. Donovan
General Counsel

KED:ld:kidneywhit