

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

June 15, 1995

Mary Juanita Wood  
Associate General Counsel  
San Diego Gas & Electric  
P.O. Box 1831  
San Diego, CA 92112-4150

Re: Your Request for Advice  
Our File No. A-95-167

Dear Ms. Wood:

This is in response to your letter requesting advice on behalf of Alberto Abreu regarding his responsibilities as a former employee of the San Diego County Air Pollution Control District pursuant to Section 87406.1 of the Political Reform Act (the "Act").<sup>1</sup>

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTION

Will the "revolving door" provision contained in Section 87406.1 restrict Mr. Abreu's ability to appear before the San Diego County Air Pollution Control District on behalf of San Diego Gas & Electric Company?

---

<sup>1</sup> 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, Sections 18000-18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### CONCLUSION

Mr. Abreu may not be compensated to act as agent or attorney for, or otherwise represent any other person, by making any formal or informal appearance before, or by making any oral or written communication to, the San Diego County Air Pollution Control District, if the appearance or communication is made for the purpose of influencing regulatory action. This prohibition applies to communications with any committee or subcommittee of the district, and any present member of the district board, or any officer or employee of the district. The prohibition applies for one year after Mr. Abreu left employment with the San Diego County Air Pollution Control District.

### FACTS

San Diego Gas & Electric Company (SDG&E) has recently hired Mr. Abreu as a senior environmental analyst. Prior to accepting employment with SDG&E, Mr. Abreu was employed with the San Diego County Air Pollution Control District (the district) from August 1989 to March 1995. During Mr. Abreu's tenure with the district, Mr. Abreu held the following positions: associate engineer, acting senior engineer, and senior engineer. According to the material you submitted on May 31, 1995, each of these positions is designated in the conflict of interest code of the San Diego Air Pollution Control Board.

### ANALYSIS

#### Revolving Door Restriction

The Act includes several provisions that provide restrictions on the postgovernmental activities of public employees. For example, Sections 87401 and 87402 provide a lifetime ban for some employees. Section 87406 provides a one-year restriction on the post-employment activity of designated employees and other officials of state administrative agencies. Section 87406.1 was added to the Act in 1995 and applies to former employees of air pollution control districts or air quality management districts, such as the San Diego County Air Pollution Control District.

Section 87406.1(b)<sup>2</sup> provides that:

[N]o former officer or employee of a district who held a position which entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, shall, for a period of one year after

---

<sup>2</sup> Section 87406.1 does not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another district or an employee or representative of a public agency. (Section 87406.1(c).)

leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that district board, or any committee, subcommittee, or present member of that district board, or any officer or employee of the district, if the appearance or communication is made for the purpose of influencing regulatory action.

Thus, pursuant to Section 87406.1, if Mr. Abreu held a position with the district which entailed the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest, he will be subject to the revolving door restrictions.

You have argued that Mr. Abreu's position at the district did not involve "the making, or participation in the making, of decisions which may foreseeably have a material effect on any financial interest." However, we note that as a senior employee of the district, the district determined that Mr. Abreu was a designated employee and was required to file annual statements of economic interests under the district's conflict of interest code.

Section 87300 of the Act requires every agency to "adopt and promulgate a Conflict of Interest Code pursuant to the provisions of this article." Section 87302 requires that every conflict of interest code specifically enumerate the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. These persons are considered "designated employees." (Section 82019(c).)

Thus, the district determined that Mr. Abreu held a position which involved the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. Since Mr. Abreu held a position which entailed the making, or participation in the making, of decisions which may foreseeably have had a material effect on any financial interest, Section 87406.1 would apply to him for one year.

#### Regulatory Proceedings

Section 87406.1 prohibits any communication made for the purpose of influencing regulatory action for one year. What constitutes a regulatory action is not defined in the Act. However, the report of the Senate Committee on Elections and Reapportionment concerning Assembly Bill 3214 (the legislation that enacted Section 87406.1) stated that Section 87406.1 was adopted in light of Health and Safety Code Section 40426.7 which prohibits former employees of the South Coast Air Quality Management District from contracting with their former employer or

contacting their former employer regarding proceedings in which they were involved as public employees.

The analysis of AB 3214 prepared by the Senate Committee on Elections and Reapportionment stated:

According to the author, board members and key staff of air pollution control districts and air quality management districts are in a unique position to influence regulatory policy which affects every business or individual in a community.

\* \* \*

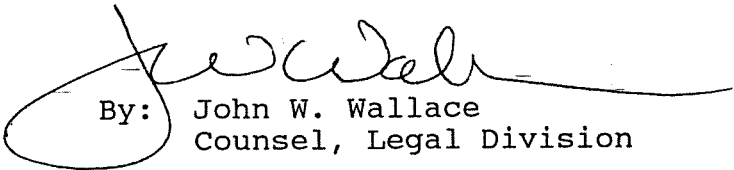
The standard which applies to Legislators and staff in the administration should also be applied to board members and staff of AQMDs and APCDs.

Consistent with this legislative intent, we would interpret the prohibition broadly to apply to any rule, regulation, or other action in any rate-making proceeding or any quasi-legislative proceeding before the district.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.<sup>3</sup>

Sincerely,

Steven G. Churchwell  
General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

---

<sup>3</sup> Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.