

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

October 11, 1995

James R. Sutton  
Nielsen, Merksamer, Parrinello,  
Mueller & Naylor  
591 Redwood Highway, #4000  
Mill Valley, CA 94941

Re: Your Request for Advice  
Our File No. A-95-282

Dear Mr. Sutton:

You have requested advice on behalf of the Coalition for Habitat Conservation (the "Coalition") concerning the lobbying disclosure provisions of the Political Reform Act (the "Act").<sup>1/</sup>

QUESTION

Does attempting to add or remove an animal from the list of endangered species maintained by the Department of Fish and Game (the "Department") constitute "attempting to influence legislative or administrative action" for purposes of the Act's lobbying provisions?

CONCLUSION

Attempting to add or remove an animal from the list of endangered species constitutes an attempt to influence administrative action for purposes of the lobbying disclosure provisions of the Act.

FACTS

According to your letter, the Coalition is an organization involved in habitat conservation planning and endangered species

---

<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 Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

issues. Part of its activities involve communicating with officials of the State Department of Fish and Game to influence whether a particular species or subspecies will be added or removed from the list of endangered species maintained by the Department.

You have also stated that state law requires the Department to maintain a list of endangered species and to add or remove species from the list where warranted by sufficient "scientific information." (Fish and Game Code Sections 2070 and 2075.5; 14 Cal. Code of Regulations Section 670.5.) The law also requires the Department to comply with certain procedural rules applicable to the enactment of formal regulations, such as publishing a "notice of proposed rulemaking pursuant to Government Code Section 11346.4" whenever it decides to add or remove an animal from the list. In addition, proceedings regarding additions or removals from the list are governed by provisions in the Government Code which spell out the procedure whereby the Office of Administrative Law approves regulations issued by state agencies.

#### ANALYSIS

One of the purposes of the Act is to assure that activities of lobbyists are regulated and disclosed in order that improper influences will not be directed at public officials. (Section 81002(b).) To accomplish this purpose, the Act requires individuals and entities that meet certain threshold criteria to report expenditures and activities in connection with attempting to influence state legislative or administrative action. (Sections 86100-86118.)

"Legislative action" is defined in Section 82037 to include activities of the State Legislature or of the Governor in approving or vetoing legislation. The Department of Fish and Game is a state agency. (Section 82049.) Therefore, its proceedings would not be considered "legislative action."

"Administrative action" is defined in Section 82002 to mean:

...the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2.

In order to be considered "administrative action," a proceeding of a state agency which is not a rate-making proceeding must result in a rule or regulation, or otherwise be a quasi-legislative proceeding. In making a determination whether a particular proceeding is quasi-legislative, the Commission has

concluded that matters which are quasi-judicial, such as the granting of licenses or permits, are not quasi-legislative. (See, In re Evans (1978) 4 FPPC Ops. 84; In re Leonard (1976) 2 FPPC Ops 54; Abbott Advice Letter, No. A-88-164; Teitelbaum Advice Letter, No. A-86-277.) The Commission has also adopted a regulation which excludes certain types of proceedings from the definition of "quasi-legislative proceeding." Regulation 18202 provides as follows:

(a) A proceeding of a state agency is not a quasi-legislative proceeding for the purposes of Government Code Section 82002 if it is any of the following:

(1) A proceeding to determine the rights or duties of a person under existing laws, regulations or policies.

(2) A proceeding involving the issuance, amendment or revocation of a permit or license.

(3) A proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.

(4) A proceeding at which an action is taken involving the purchase or sale of property, goods or services by such agency.

(5) A proceeding at which an action is taken which is ministerial in nature.

(6) A proceeding at which an action is taken awarding a grant or contract.

(7) A proceeding involving the issuance of a legal opinion.

The Commission has based its determinations of whether public agency functions are quasi-legislative or quasi-judicial on relevant case law, which provides that quasi-judicial proceedings generally determine the rights of specific parties, or apply existing law to specific situations, while quasi-legislative proceedings involve adoption of rules of general applicability which apply primarily to future situations. (See, In re Curiel (1983) 8 FPPC Ops. 1.)

In your letter, you indicate that you feel the process of adding or removing an animal from the list of endangered species is more akin to an application for a license or permit because interested parties must "petition" the Department to act.

However, we conclude that these proceedings are quasi-legislative in nature rather than quasi-judicial. The list is contained in the California Code of Regulations and the Department is required to comply with the procedural rules for adopting or amending formal regulations (the Administrative Procedure Act) in order to add or remove a species from the list. In addition,

application of the list is general in nature and governs the future activities of a wide variety of interests. On the other hand, the granting of a license or permit is an action which gives a specified party formal permission to do some specified thing. (Webster's New World Dictionary, Second College Edition.)

Therefore, attempts to influence the action of the Department to add or remove an animal from the list of endangered species are attempts to influence "administrative action" for purposes of the Act's lobbying disclosure provisions.

If you have questions concerning this letter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel

*Carla Wardlow*

By: Carla Wardlow  
Division Chief  
Technical Assistance Division