

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

December 20, 1995

Colleen C. McAndrews
Bell, McAndrews & Hiltachk
1441 Fourth Street
Santa Monica, California 90401

Re: Your Request for Informal
Assistance
Our File No. I-95-283

Dear Ms. McAndrews:

You have requested informal assistance with respect to Government Code Section 84308 of the Political Reform Act (the "Act")¹ on behalf of a fundraising consultant who works for a member of the Los Angeles County Metropolitan Transportation Authority ("MTA"). You have posed a series of questions, many of which are hypothetical, regarding permissible fundraising activities of the unidentified MTA member. For the reasons set forth below, these questions are inappropriate for informal assistance from the staff of the Commission. We would be happy to meet with you to discuss how you may obtain answers to these issues.

FACTS

The only facts included in your letter are the following: an engineering firm is a contract applicant on its own behalf for different MTA projects. Among many stockholders, no individual has a majority of the stock. Assume the president of the engineering firm does not involve himself in the contracting functions of the firm with the Metropolitan Transit Authority. He neither communicates directly, either in person or in writing, with an officer of the MTA for the purpose of influencing a decision nor does he testify in person.

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, Sections 18000-18995.

In relation to the above facts, your letter posed the following questions or asked confirmation of certain hypothetical questions:

1. May the president of the engineering firm host a fundraiser for the MTA official in his home during which a nonmonetary contribution in excess of \$250 for food and fundraising expenses may be contributed and may he solicit contributions?
2. May the president of the engineering firm make a monetary contribution in excess of \$250 to the MTA official?
3. Would the answer to Question 1 or 2 change if the president involves himself in MTA contracting functions by monitoring and supervising them within the firm but still does not "lobby in person" as defined in 18438.4?
4. The spouse of the president of the engineering firm may be active in the campaign. If the answer to Question 1 or 2 is "no," may she host a fundraiser in their home, solicit the contributions in her name alone, and attend the fundraiser without her husband being present?
5. If the answer to Question 1 or 2 is "no," may the spouse of the president of the engineering firm host a fundraiser in a location away from the home?
6. Please confirm that if no contract decision is currently pending before the MTA for the engineering firm and it is past any post-decision period (3 months under Section 84308, but six months under the Ethics Policy adopted by the MTA on February 22, 1995), the engineering firm itself, any agents, and any of the officers who "lobby in person" may be solicited by the fundraiser for the MTA official and they may make contributions in excess of \$250. If, in the future within 12 months, a contract proceeding is initiated, the MTA official then must either disqualify him or herself or return the contribution for the amount in excess of \$250.
7. If the engineering firm has no decision pending and it is beyond six months since a decision was rendered but the action resulting from the prior decision (ie., a contract was granted) is being performed between the firm and the agency, and the contract continues to be funded through annual budgets of the agency, will any of the prohibitions and limitations under Section 84308 continue?
8. A contract applicant/party before the MTA hires a consulting firm which is a partnership to help it win a contract

or permit. One of the partners of the consulting firm acts as an agent under Regulation 18438.3 in that he or she represents the party in connection with the contract or permit. Both the consulting firm and the individual are deemed to be "agents." May other partners in the consulting firm who are not actively involved in "lobbying" the MTA because they do not communicate directly with the agency, do not testify before the agency, or do not otherwise act to influence the officers of the agency, contribute over \$250 to an official of the MTA?

9. Would the answer to Question 8 change if the non-lobbying members of the consulting firm acting as an agent were employees and not partners?

10. Large accounting firms, law firms and other firms that have consulting contracts with the MTA appear on the MTA's list for conflict checks. May the candidate and/or the fundraising consultant solicit partners and employees of those firms so long as he or she has no specific knowledge that an individual "lobbies in person" before the MTA as defined in Regulation 18438.4 (ie., communicates directly, either in person or in writing, with the MTA or testifies in person for the purpose of influencing a decision).

11. The MTA official may not solicit a contribution from a party, agent of a party, participant, or agent of a participant for either his own campaign or for any other candidate or ballot measure. However, can an agent of the MTA official (ie., a fundraiser) solicit from parties, agents of parties, participants, or agents of participants for other candidates' controlled committees or ballot measure committees that are supported by the MTA official? Does it matter whether the MTA official does or does not have knowledge of the fundraiser's solicitation activities?

10. [sic] If an MTA contract is competitively bid, does Section 84308 not apply?

11. [sic] Please confirm that even if a non-competitively bid contract is lost, an MTA official may not accept, solicit, or direct a contribution of more than \$250 from any party, agent, participant, or agent of participants for the post-decision period.

ANALYSIS

Section 83114(b) states that any person may request the Commission to provide written advice with respect to the person's duties under this title. You have requested advice on behalf of your client, a fundraising consultant, whose client is a member of

the Los Angeles MTA. You have declined to name both the consultant and the public official. Your questions pertain to various fundraising activities of an engineering firm which is an applicant for MTA projects, the president of the engineering firm and the president's spouse, all of whom are also unnamed. Further questions deal with a consulting firm hired by a contract applicant before the MTA, again all unnamed.

You have specifically requested "informal assistance." Regulation 18329(c)(1) states that:

Informal assistance may be requested by any person whose duties under the Act are in question or by that person's authorized representative. In addition, informal assistance may be requested by any person with a duty to advise other persons relating to their duties or actions under the Act. Informal assistance may also be requested by any agency whose members or employees are subject to the provisions of the Act.

The MTA official clearly has duties under the Act. (Section 84308(b).) However, the official is not your client. Your client is the fundraising consultant, who has been retained by the official. The fundraising consultant is liable for violations of the Act under Section 83116.5 as a person who is "compensated for services involving the planning, organizing or directing any activity regulated or required" by the Act. Questions 10 and 11 apply to the fundraising consultant.

You have also asked several questions about parties and participants and their agents, although you do not appear to represent any of them. You have posed numerous hypothetical questions about the president of the engineering firm which is an applicant for different MTA projects and the president's spouse. You have also asked questions regarding the activities of contracts applicants and consulting firms which represent party/contract applicants.

As we discussed during our telephone conversation in late October of 1995, the Commission may decline to provide informal assistance pursuant to Regulation 18329(c)(4) in any of the following circumstances:

(A) Assistance or advice is being sought regarding past conduct, unless the advice or assistance sought is related to possible amendment of previous reports filed by the person requesting the advice.

(B) The requestor is seeking advice anonymously.

(C) Assistance or advice is being sought regarding the duties of another person and the requestor does not appear to be authorized to make the request as the person's representative, or does not provide the identity of the person on whose behalf the assistance is being sought.

(D) The question presented is purely hypothetical.

(E) The question presented is too complex or is otherwise inappropriate for resolution by informal assistance and should be resolved by formal written advice or an Opinion.

(F) The facts presented are insufficient or too vague to render specific informal assistance or do not appear to present a question under the Act.

(G) Rendering informal assistance would be inappropriate or otherwise not in the public interest.

It appears that factors (C) through (G) apply to most of the questions that you have presented. Factor (C) applies to the majority of the questions because you neither represent the persons for whom advice is sought nor do you provide the identity of any of the persons for whom advice is requested. In addition, the questions lack specific facts. It is also difficult to address a specific question because several of the questions are interrelated and the answers become dependent upon the previous answers.

Therefore, for we decline to provide informal assistance for all the above reasons and the following:

Questions 1 through 5

Factors (C) through (G) apply because there is no identity of the president or his spouse, the name of the engineering firm or the identity of the MTA official. All of the questions are too interrelated and are also hypothetical.

Question 6

Factors (C) through (G) apply because there is no identity of the MTA official or the engineering firm. The facts are also insufficient.

Question 7

Factors (C), (D) and (F) apply because there is no identity of the engineering firm and the facts are insufficient.

Questions 8 through 9

We do not know if these questions apply to the engineering firm or are general in nature. Factors (C) through (G) apply.

Questions 10 and 11

Although we realize that these questions apply to the fundraising consultant, factor (C) applies because the identity of the fundraising consultant is not provided. Factors (F) and (G) also apply.

Questions 10 [sic] and 11 [sic]


Factors (C), (D), (F) and (G) apply because there is no identity of the MTA official, whom you do not represent, and the facts are insufficient.

Since your request is inappropriate for the informal assistance which you have requested, we cannot provide written advice. However, your duties under the Act are very important and we realize that this is a difficult area of the law. We would be happy to meet with you either in person or by conference call to further discuss what would be necessary in order for us to provide you with assistance.

Please contact me if you have any further questions.

Sincerely,

Steven G. Churchwell
General Counsel

By:  Jill Stecher
Staff Counsel, Legal Division

SGC:JS:ak