

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

November 1, 1995

Wayne L. Ordos  
Wilke, Fleury, Hoffelt,  
Gould & Birney  
400 Capitol Mall, 22nd Floor  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. A-95-326

Dear Mr. Ordos:

You have requested advice on behalf of Pane & Pane Associates, a registered lobbying firm, concerning the lobbying provisions of the Political Reform Act (the "Act").<sup>1/</sup>

QUESTIONS

1. May Josh Pane, a registered lobbyist, or another employee of Pane & Pane Associates, receive a monthly retainer and a commission for his successful efforts to lobby county governments to sell their tax delinquencies to Capitol Asset Research Corporation if Pane & Pane Associates continues to provide lobbying services to the corporation at the state level?
2. Does the Act preempt any local jurisdiction from enacting an ordinance which would limit or prohibit the type of lobbying commission compensation agreement described above?

CONCLUSIONS

1. The Act does not prohibit Mr. Pane or the lobbying firm from receiving a monthly retainer and a commission in connection with efforts to sell the corporation's services to local government agencies.

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<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.

2. Local jurisdictions may adopt ordinances regulating activities at the local level so long as the ordinances do not conflict with the provisions of the Act. A local ordinance limiting or prohibiting these activities would not conflict with the Act.

#### FACTS

Pane & Pane Associates was retained by Capitol Asset Research Corporation in January 1995 to assist in the passage of legislation to provide county governments the option to sell their delinquent property taxes to private third parties. That legislation, Assembly Bill 946 (Caldera), was passed by the Legislature and signed into law by the Governor on July 22, 1995. (Chapter 189, Statutes 1995.)

Pane & Pane Associates currently remains on a monthly retainer agreement with the corporation for lobbying services to January 1996 and the corporation wishes to continue contracting with the firm for lobbying services at the state level.

Since passage of the legislation, the corporation has offered one of the partners of the lobbying firm, Josh Pane, an additional contract to assist the corporation in its negotiations with various county officials regarding the acquisition of their county tax delinquencies. The contract would provide a monthly retainer and a commission on each agreement reached with counties that agree to sell their delinquencies to the corporation.

#### ANALYSIS

Section 86205 prohibits a lobbyist or lobbying firm from accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment or outcome of any proposed legislative or administrative action.

The terms "administrative action" and "legislative action" are defined in the Act as follows:

"Administrative action" means 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.

Section 82002.  
(Emphasis added.)

"Legislative action" means the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity. "Legislative action" also means the action of the Governor in approving or vetoing any bill.

Section 82037.  
(Emphasis added.)

Because the scope of Section 86205(f) is limited to actions of the Governor, the State Legislature, and state administrative agencies, Mr. Pane's efforts to negotiate with local government agencies to purchase their delinquent property taxes would not be deemed attempts to influence legislative or administrative action.<sup>2/</sup> Therefore, he would not be prohibited from accepting commissions in connection with these activities. The fact that Mr. Pane has engaged in lobbying activities at the state level in the past on behalf of the corporation and will continue doing so does not alter this conclusion.

With regard to your second question, there is nothing in the Act that would prevent a local government from enacting an ordinance prohibiting the acceptance of contingency fees in connection with proceedings before local agencies. Section 81013 provides:

Nothing in this title prevents the Legislature or other state or local agency from imposing additional requirements on any person if the requirements do not prevent the person from complying with this title....

An ordinance which restricts contingency payments in connection with lobbying activities at the local level would not prevent a person from complying with the provisions of the Act.

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<sup>2/</sup> It should also be noted that proceedings of a state agency involving the purchase or sale of property, goods or services by the agency are also not considered "administrative action" under the Act. (See, Regulation 18202(a)(4).) However, this exception is not applicable to matters involving the purchase or sale of property, goods or services by the Legislature. (Section 82037; Koplin Advice Letter, No. A-90-121.)

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

Sincerely,

Steven G. Churchwell  
General Counsel

*Carla Wardlow*

By: Carla Wardlow  
Division Chief  
Technical Assistance Division