

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

February 27, 1997

Allen L. Pross  
1461 Page Street  
San Francisco, California 94117

**Re: Your Request for Advice  
Our File No. A-97-035**

Dear Mr. Pross:

This letter is a response to your request for advice regarding the provisions Proposition 208 and the Political Reform Act (the "Act").<sup>1</sup>

### QUESTION

As a government relations consultant, may you receive consulting fees from lobbying firms and trade associations if your consulting services include giving campaign advice, making recommendations regarding contributions, and notifying candidates that contributions are forthcoming?

### CONCLUSION

Yes, you may receive consulting fees from lobbying firms and trade associations to provide such services as long as these services comply with the provisions of Proposition 208.

### FACTS

You are a governmental relations consultant. As a consultant, you provide advice to your clients regarding campaigns and elections. You frequently talk to candidates or their representatives regarding forthcoming contributions from major donors.

Your consulting agreement with your clients includes a fee, which is agreed upon monthly, to provide political updates and advice regarding contributions. Your paying clients include lobbying firms that are retained to lobby on behalf of their clients and trade associations

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<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

that pay you for giving general campaign advice to their sponsored PAC or individual members of their association who make contributions on their own as a major donor.

You do not believe that you are a lobbyist because you do not discuss or communicate with either elected or appointed governmental officials and you are not retained for any of these purposes. At times, you notify candidates that contributions are forthcoming and/or make recommendations regarding contributions to your clients. However, you do not have any control over any decision to contribute by any of your clients or the entities they represent and you do not have a vote in this decisionmaking process.

Your primary concern is whether, under Proposition 208, you can continue your consulting arrangements and receive your contractual fees as you have in the past in light of your contractual agreements with lobbying firms and/or trade associations.

### ANALYSIS

The voters approved Proposition 208 on November 5, 1996, which went into effect on January 1, 1997. Nothing in Proposition 208 directly prohibits you from receiving consulting fees from lobbying firms and trade associations for giving advice to your clients. However, four provisions of the Proposition 208 might affect you.

#### **Contributions From, Through, or Arranged by a Lobbyist**

Proposition 208 prohibits officeholders and candidates from soliciting or accepting contributions from specified lobbyists. Specifically, section 85704 provides as follows:

“No elected officeholder, candidate, or the candidate’s controlled committee may solicit or accept a campaign contribution or contribution to an officeholder account from, through, or arranged by a registered state or local lobbyist if that lobbyist finances, engages, or is authorized to engage in lobbying the governmental agency for which the candidate is seeking election or the governmental agency of the officeholder.”

In addition, section 85313(c) provides the following:

“No elected officeholder or officeholder account shall solicit or accept from any person, a contribution or contributions to the officeholder account from, through, or arranged by a registered state or local lobbyist or a state or local lobbyist employer if the lobbyist or lobbyist employer if that lobbyist or lobbyist employer finances, engages, or is authorized to engage in lobbying the governmental agency of the officeholder.”

In your request for advice, you indicate that you provide consulting services to lobbying firms and trade associations regarding campaigns and elections. As a consultant, you notify candidates that contributions are forthcoming and/or you make recommendations regarding contributions to the lobbying firms or trade associations. Sections 85704 and 85313(c) will not apply to your consulting arrangements unless you qualify as a lobbyist.

### **Definition of Lobbyist**

Proposition 208 modifies the definition of lobbyist. Section 82039, as amended by Proposition 208, defines a "lobbyist" as:

"Any individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, to communicate directly or through his or her agents with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action. No individual is a lobbyist by reason of activities described in Section 86300."

You do not believe that you are a lobbyist because your consulting services do not include discussing or communicating with elected or appointed officials. The Commission is currently examining the definition of lobbyist. At this time the staff is recommending to the Commission that "an individual must engage in at least some communication with a qualifying official for the purposes of influencing legislative or administrative action before the individual qualifies as a lobbyist." (Staff Memorandum to Chairman and Commissioners titled *Opinion Request on Lobbyist Issues* dated January 24, 1997.) The definition of lobbyist will be one of the issues on the agenda for the Commission meeting in March. For your consideration, I have enclosed materials that are currently being reviewed by the commissioners concerning the definition of lobbyist.

### **Bundling**

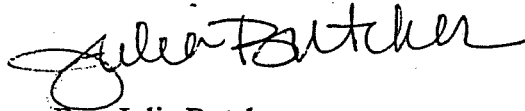
Proposition 208 establishes limitations on the amount persons can contribute to candidates and officeholders. (See sections 85301, 85310, 85402.) Section 85702 provides that under certain circumstances a contribution made to a particular candidate through an intermediary or conduit will be treated as a contribution from the contributor *and* the intermediary or conduit for purposes of the limitations on contributions.

With respect to contributions, your consulting services are limited to notifying candidates that contributions are forthcoming and making recommendations regarding contributions to lobbying firms or trade associations. Under these facts you are not an intermediary or conduit for purposes of section 85702.

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

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in cursive script, appearing to read "Julia Butcher".

By: Julia Butcher  
Graduate Assistant, Legal Division

SGC:JB:ak