RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

April 2, 1997

Ed J. Mireles
Teamsters Joint Council No. 92
140 So. Marks Way, Suite 92
Orange, California 92668

Re: Your Request for Advice
Our File No. G-97-110

Dear Mr. Mireles:

This letter is a response to your request on behalf of the members of the Executive Board (the "board members") of Teamster Joint Council No. 92 ("Council") for advice regarding the Political Reform Act (the "Act").[1]

QUESTION

Under the facts stated below, "[a]re our Board members now more liable than they were before Proposition 208, with respect to actions our lobbyist may take?"

CONCLUSION

We are unable to answer this question as asked. We cannot advise you as to whether you are "more liable" for your lobbyist's actions after the passage of Proposition 208 absent particular facts about what your lobbyist might propose to do, and the context in which he or she might propose to do it. We have provided you with some background information about Proposition 208's lobbyist contribution restrictions.

FACTS

The Council has a lobbyist in Sacramento who works only for you. Neither the Council nor the lobbyist makes contributions to candidates or officeholders. The Council does not have a PAC. All requests for contributions from candidates and/or officeholders are forwarded to the national Teamsters' office, from which office all contributions are made. Since the passage of

[1] Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

Proposition 208, you have not made recommendations on such contributions by the national office. We infer that both board members and the lobbyist have historically made recommendations to the national office about whether to make contributions to candidates and/or officeholders in California.

ANALYSIS

We assume that your question refers to the lobbyist contribution restrictions added to the Act by Prop. 208. Section 85704, which pertains to campaign contributions, provides:

> "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."

Section 85313(c), which pertains to officeholder accounts, provides:

> "(c) No elected officeholder or officeholder account shall solicit or accept a contribution to the officeholder account from, through, or arranged by a registered state or local lobbyist or a state or local lobbyist employer if that lobbyist or lobbyist employer finances, engages, or is authorized to engage in lobbying the governmental agency of the officeholder."

These two provisions forbid contributions "from, through, or arranged by" lobbyists to certain candidates or officeholders. We further assume that your question refers to any liability under the Act that the board members may incur as a result of your lobbyist violating either of these provisions.

At its February 1997 and March 1997 meetings, the Commission considered at length these two lobbyist contribution restrictions. At the March meeting, the Commission voted to adopt certain interpretations of these lobbyist contribution restrictions, and instructed staff to prepare a new regulation along those lines. **We stress that these interpretations are *tentative*--until they are formally adopted as regulations by the Commission, they should be relied on cautiously.** Of particular relevance to your question:

- The Commission tentatively decided to interpret Sections 85704 and 85313(c) *not* to allow a candidate or officeholder to send a solicitation for a contribution to a lobbyist for further forwarding to the lobbyist's client or employer.

- The Commission tentatively decided to interpret Sections 85704 and 85313(c) to allow a lobbyist *to advise* his or her client or employer about whether to make a contribution (assuming the solicitation was otherwise properly made), as long as the ultimate decision

about making the contribution rests with the client or employer.

Thus, at least tentatively, a candidate or officeholder may not solicit a contribution from your organization through your lobbyist. However, if the solicitation is made through a board member or other officer (assuming that this person is not also a lobbyist), then the lobbyist may advise the board or the national office about whether to make the contribution as long as the final decision about the contribution remains with someone other than the lobbyist. Finally, nothing in Proposition 208 affects the ability of the board members or any other person other than lobbyists to accept solicitations for or to make recommendations about whether to make a contribution.

Unfortunately, we are unable to answer what seems to be your primary question as it framed. We cannot advise you as to whether you are "more liable" for your lobbyist's actions after the passage of Proposition 208 absent particular facts about what your lobbyist might propose to do,[2] and the context in which he or she might propose to do it.

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

Sincerely,

Steven G. Churchwell
General Counsel

By: John Vergelli
Staff Counsel, Legal Division

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[2] Commission advice is prospective only, and does not address past conduct. (Regulation 18329(b)(8)(A).)