

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

August 25, 1997

Vern Goehring
555 University Avenue, #126
Sacramento, California 95825

**Re: Your Request for Advice
Our File No. I-97-395**

Dear Mr. Goehring:

This letter is a response to your request for advice regarding the post-employment provisions of the Political Reform Act (the "Act").¹ Many of your questions refer to past conduct. Pursuant to Regulation 18329 we do not answer those questions relating to past conduct and therefore provide you with only informal advice.²

QUESTIONS

1. Is your attendance and verbal participation in group meetings with legislators and other interested parties allowed under the provisions of the Act?
2. Is your attendance at the same group meetings only as an observer and not a verbal participant allowed under the provisions of the Act?
3. May you participate and testify at legislative committee hearings if a representative of your former department is in attendance?
4. May an associate of yours write and sign letters on your business stationery to the Department of Fish and Game urging the Department to take a specified administrative action?

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

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329, subd. (c)(3).)

CONCLUSIONS

1. Generally, whether informal meetings with legislative staff are for the purpose of influencing legislative or administrative action, if members of the Department of Fish and Game are present and representing the Department's interests, is necessarily a factual determination. You have provided relevant facts. However, you have requested advice regarding past conduct. Therefore, pursuant to Regulation 18329(b)(8)(B) we will not provide you advice.

2. Generally, you may attend informational meetings or public forums so long as you do not attempt to influence administrative or legislative action. But where there is a small meeting to discuss a particular administrative or legislative action, it may be inferred that the your mere presence is intended to influence legislative action. However, we again refuse to provide specific advice to your situation because the answer undoubtedly will relate to past conduct.

3. Generally, you may advocate a position on behalf of a client at a legislative hearing. However, you may not discuss or negotiate a matter with a representative of the Department of Fish and Game if, during the course of the hearing, you are directed to do so under the supervision and control of the Legislature or legislative staff.

4. No. Your associate may not write and sign letters on your business stationery to the Department of Fish and Game urging the Department to take a specified administrative action.

FACTS

You are a former employee of the California Department of Fish and Game. You are currently self employed as a consultant in government relations and lobbying. You previously requested and received advice regarding the post-employment restrictions of the Act. (*Goehring* Advice Letter, No. A-97-187.)

You recently obtained a client seeking legislative representation regarding the California Endangered Species Act. There are a number of bills before the Legislature on this subject and you have met with legislators and testified at legislative hearings regarding several of them. Two legislative authors have initiated a series of group meetings with representatives of various interests to explore issues, positions, and whether there is agreement on specific bill language to help them represent bills with the greatest chance of passage. They have held five meetings with approximately 20 to 30 persons in attendance. The attendees represent environmental groups, business groups and specific businesses, legislative offices and the administration. The two legislators organizing the meetings have requested a small working group (9 persons) to meet and focus on specific bill language. All meetings are scheduled by the legislator's staff and all are held at the capitol with a legislator or legislative staff conducting the meeting.

You have been attending the meetings of both the larger group and the working group representing your client's position. You have been participating in the discussions commenting on the current law and practices of the Department in implementing the Endangered Species Act,

asking clarification questions of comments by others, and stating your client's position regarding various issues that have been discussed. Also attending the meetings is a representative of the Department of Fish and Game.

ANALYSIS

You have asked a number of questions regarding the post-employment restrictions of the Act. Unfortunately, many of your questions pertain to past conduct. Pursuant to Regulation 18329(b)(8)(A) we will not provide formal advice. However, we will provide general guidance. (Regulation 18329(c)(4).) Commission staff has advised that an ex-employee of the executive branch may advocate a position on behalf of a client at a legislative hearing even if members of the ex-employee's agency are present. (See *Davidian* Advice Letter, No. A-97-76a, which notes that the ex-employee may not discuss or negotiate with the ex-employee's former agency if, during the course of a legislative proceeding or informal meeting, he is directed to do so under the supervision and control of the Legislature or legislative staff.) However, staff also concluded that whether the same employee could attend other legislative meetings where members of his former department would be present would require a factual determination. (*Davidian* Advice Letter, *supra*; *Kenny* Advice Letter, No. A-95-050; *Craven* Advice Letter, No. A-93-057.)

You also ask whether an associate of yours may write and sign letters on your business stationery to the Department of Fish and Game urging the Department to take a specified administrative action. Your business stationery as presented to us in this advice request includes in oversized letters at the top of the page only your name and job description "Vernell (Vern) G. Goehring, Government Representation" and your address in much smaller caps immediately below your name and job description.

It has been Commission staff's often recited interpretation of Section 87406 that the inclusion of the ex-employee's name on the employer's normal letterhead will not constitute an appearance before or communication to the employee's agency. (*Davidian* Advice Letter, *supra*; *Perry* Advice Letter, No. A-94-004.) At the Commission meeting in July of this year, the Commission itself discussed this issue. Although it did not change the Commission's policy to determine these issues on a case-by-case basis, it was very uncomfortable with allowing a former governmental official's name to be prominently featured on a letter to his or her former agency during the one year period.

Commission staff concludes that your associate may not write or sign letters on your business stationery urging the Department of Fish and Game to take specified administrative action. This would constitute a prohibited appearance or communication.


This advice is consistent with the plain reading of Section 87406 which refers to "any" written communication of the ex-employee which is made for the purpose of influencing administrative or legislative action. Also, this advice is consistent with other long-standing advice regarding Section 87406. For instance, the Commission has advised that a former agency official may draft proposals on a client's behalf to be submitted to the agency so long as the

former employee *is not identified* in connection with the client's efforts to influence administrative action. (*Cook* Advice Letter, No. A-95-321; *Harrison* Advice Letter, No. A-92-289.) Similarly, Commission staff has consistently advised that the ex-employee may use his or her expertise to advise clients on the procedural requirements, plans, or policies of the employee's former agency *so long as the employee is not identified* with the employer's efforts to influence the agency. (*Perry* Advice Letter, *supra*.)

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Marte Castaños
Staff Counsel, Legal Division

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