

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

September 19, 1997

Phillip L. Isenberg  
Hyde, Miller, Owen & Trost  
428 J Street, Suite 400  
Sacramento, California 95814

**Re: Your Request for Advice  
Our File No. A-97-482**

Dear Mr. Isenberg:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that we do not advise on any past conduct and can only advise prospectively.

### QUESTIONS

1. Under Government Code Section 87406(b), may you talk to state legislators or state legislative staff about their questions concerning the Kaiser Blue Ribbon Advisory Panel on Arbitration, and listen to their suggestions concerning changes in the Kaiser system?
2. May you attend and participate in meetings with state legislators or state legislative staff for the purpose of discussing the Kaiser Blue Ribbon Advisory Panel on Arbitration and receiving their suggestions for needed changes in the Kaiser arbitration system?

### CONCLUSIONS

1 & 2. You may only communicate with state legislators or state legislative staff about non-legislative questions or issues concerning the Kaiser Blue Ribbon Advisory Panel on Arbitration, and changes in the Kaiser system.

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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.

## FACTS

You have been retained by the Kaiser Foundation Health Plan, Inc., to be a member of its Blue Ribbon Advisory Panel on Arbitration ("panel"). This panel was formed to give Kaiser the best advice possible on ways in which its arbitration system might be modified to better serve the members of Kaiser. The panel was formed shortly after the California Supreme Court issued its decision in *Engalla v. Permanente Medical Group, Inc.*, (1997), S048811.

Contemporaneous with your work, committees and members of the State Legislature have introduced bills and held policy hearings on the general subject of arbitration of disputes between health plans and their members. Your panel has been contacted in writing by Martha M. Escutia, Chairwoman of the Assembly Committee on Judiciary. Chair Escutia convened a meeting of her committee on August 14, 1997, to discuss the *Engalla* case and its implications.

Chair Escutia presented a number of ideas to the panel and asked to be kept informed on the issue and the deliberations of the panel. Accordingly, Judge Eugene F. Lynch (Federal District Court, Retired), the Chair of the panel called to communicate his willingness to meet with Chair Escutia or any legislator to solicit their ideas as to needed reforms of the Kaiser arbitration system. You were a member of the State Assembly until November 30, 1996.

The mandate of your panel does not in any way involve legislative relations, lobbying, or the contacting of legislators for the purpose of influencing legislation.

## ANALYSIS

Effective January 1, 1991, the Legislature enacted a series of statutes intended to establish new ethical guidelines for public officials. The Act now provides that legislators, state officeholders and designated employees of administrative agencies are subject to restrictions on their post-government employment activity.

Section 87406(b) provides:

"(b) No member of the Legislature, for a period of one year after leaving office, shall, for compensation, act as agent or attorney for, or otherwise represent, any other person by making any formal or informal appearance, or by making any oral or written communication, before the Legislature, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing legislative action."

You were formerly a member of the California State Assembly. Pursuant to Section 87406(b), you are prohibited from lobbying, for a period of one year after leaving office, the following: (1) the Legislature; (2) any committee or subcommittee of the Legislature; (3) any present Member of the Legislature; or (4) any officer or employee of the Legislature.

In your conversation with staff counsel on September 9, 1997, you stated that you are being offered compensation to serve as a member of the panel. You may participate in this panel unless your appearance or communication will be for the purpose of "influencing legislative action." This term is defined in Section 82032 and includes promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies or analysis.

"Legislative action" is defined as the drafting, introduction, consideration, modification, enactment or defeat of any bill, by 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 or her official capacity. (Section 82037.) Thus, under the Act, "legislative action" generally pertains to bills and other matters before the state Legislature. (*Bagatelos* Advice Letter, No. I-91-202.)

Based on the facts presented, it appears that participating in a panel to discuss reform of the Kaiser arbitration system would not be for the purpose of influencing legislative action. However, note that the Act's definitions of the terms "legislative action" and "influencing legislative action" are very broad. (*Craven* Advice Letter, No. A-93-057.) Any discussion with a state legislator or legislative staff or communication that you know or have reason to know will be transmitted to the aforementioned on proposed legislation or amendments to current legislation, will be considered for the purpose of "influencing legislative action" and may place you in violation of Section 87406. This would be true for example, if you provide information to the legislative committee for the compilation of a committee report.

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

Sincerely,

Steven G. Churchwell  
General Counsel

By:   
Douglas White  
Graduate Assistant, Legal Division

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