

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 26, 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-97-484**

Dear Mr. Isenberg:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. May you speak to the Metropolitan Water District Board of Directors at a public meeting, on a subject that may or may not involve legislation, if members of the state Legislature or state legislative staff will be in attendance?
2. May you moderate a panel discussion at a public meeting of the Metropolitan Water District Board of Directors, if one of the panel members is a state legislator or a state legislative staff member?

CONCLUSIONS

1. Yes. You may speak to the Metropolitan Water District Board of Directors at a public meeting, on a subject that may or may not involve legislation, if members of the state Legislature or state legislative staff will be in attendance, provided the purpose of the meeting is not to influence legislative action.

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

2. Yes. You may moderate a panel discussion at a public meeting of the Metropolitan Water District Board of Directors, if one of the panel members is a state legislator or a state legislative staff member, if you do not speak or communicate about any existing or future legislation.

FACTS

You are employed by a consultant who is under contract with the Metropolitan Water District of Southern California (MWD), a district organized under the provisions of state law.

You have been asked either to speak to the MWD Board of Directors, or moderate a panel discussion during a board meeting, on the subject of reorganization or restructuring of MWD. This meeting is an open, public meeting of the board to be held at the end of September.

It is your understanding that legislators and legislative staff members occasionally attend MWD board meetings and workshops, either as observers or participants. It is also your understanding that the panel discussion, which you have been asked to moderate, may include a legislative staff member.

You left the Legislature on November 30, 1996.

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.

You stated that you are paid a flat monthly fee to work as a consultant for MWD. 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 pending legislation and other matters before the state Legislature, but also extends to drafting such bills. (*Bagatelos* Advice Letter, No. I-91-202.)

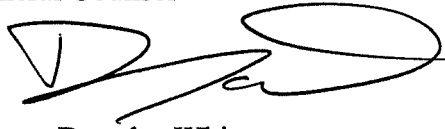
Based on the facts presented, it appears that your participation in a public forum to discuss in general the reorganization or restructuring of the MWD will not be for the purpose of influencing legislative action.² However, please note that the Act’s definitions of the terms “legislative action” and “influencing legislative action” are very broad. (*Craven* Advice Letter, No. A-93-057.) Further discussion with a legislator or legislative staff member on the matter, even though the legislation is not introduced, may be considered for the purpose of “influencing legislative action.”

² In determining whether an appearance or communication is for the purpose of influencing legislative action, “forum” will be of foremost concern. Under your facts, you will be speaking at a meeting which will be open to the public. This will not be considered for the purpose of influencing legislative action without more (i.e., a person you know to be a legislator or legislative staff member asks you questions about legislation during the meeting).

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read 'D. White', with a large, stylized flourish extending to the right.

By: Douglas White
Graduate Assistant, Legal Division

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