



FAIR POLITICAL PRACTICES COMMISSION

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March 11, 1998

Mr. John Rozsa
4333 Jan Drive
Carmichael, California 95608

**Re: Your Request for Advice
Our File No. A-98-028**

Dear Mr. Rozsa:

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

QUESTION

Does the Act prohibit you from accepting compensation from Global Business Network to facilitate scenario planning sessions or serve as a scenario planning expert for them?

CONCLUSION

The Act does not prohibit you from serving as a legislative consultant and also performing occasional work for the private firm, Global Business Enterprises. Instead, the Act prohibits public officials, such as yourself, from making, participating in making or using their positions to influence a government decision which will have a reasonably foreseeable material financial effect on their financial interests.

FACTS

You are a consultant for the Senate Energy, Utilities and Communications Committee. You are exploring opportunities to supplement your salary through outside work. You would like to accept occasional compensated opportunities to facilitate scenario planning sessions or serve as a scenario planning expert with Global Business Network ("GBN"), a scenario planning organization located in Emeryville, California. You would be paid by GBN for any occasional work you perform for the company. GBN is an organization that provides member companies

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

help if they use or wish to use scenario planning for their strategic deliberations. The company also organizes scenario planning workshops for its members and makes presentations of its analyses to groups. GBN also provides information and organizes meetings for its members on broad future trends that cut across or affect specific industries. GBN has been in existence for approximately eight years.

Scenario planning is a strategic planning technique that helps corporate and nonprofit planners develop alternative scenarios of future "business" environments. Scenario planning consultants facilitate planners' participation in the creative processes used to develop organizationally meaningful scenarios. For scenario planners, the focus is primarily on the process, not the content, although it can be helpful to have expertise in an area relevant to an organization's focus of interest. In working for GBN, you would consult to a business and devise several alternate scenarios it could pursue, or conduct meetings to assist executives in mapping the business' strategic options and plans for the future.

Scenario planning is a cross-disciplinary enterprise where the premium is on being able to integrate information from widely disparate disciplines. You have experience facilitating scenario planning and broad technical expertise from your previous employment at the California Energy Commission and have also facilitated scenario planning sessions, without compensation, for a non-profit organization in Sacramento. In addition, you hold a Ph.D. in social psychology with a specialty in organizational behavior, as well as a Bachelor of Arts in mathematics.

You would only accept assignments which were timed to not interfere with your official duties and would always take leave to do this work or do it after normal work hours. You would not work on issues for organizations that would be likely to come before you in your official capacity. You never expect GBN to be active in any legislative venue. You would not, in the course of this work, provide advice or information on the legislative process or on legislation under consideration. You would declare any income you received from GBN under such an arrangement in your annual report.

ANALYSIS

The Act does not prohibit an official from holding a public position and also performing work for a private business or firm. The Act prohibits an official from making, participating in making or using his or her official position to influence a government decision in which the official has a financial interest. (Section 87100.) Section 87103 of the Act provides that an official has a financial interest in a decision within the meaning of section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family, or on:

“(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating [\$290] or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

* * *

For purposes of this section, indirect investment or interest means any investment or interest owned by the spouse or dependent child of a public official, by an agent on behalf of a public official, or by a business entity or trust in which the official, the official's agents, spouse, and dependent children own directly, indirectly, or beneficially a 10-percent interest or greater.”
(Section 87103.)

As a designated employee of the Legislature, you are considered a “public official” under the Act, and are therefore subject to the disqualification provisions of the Act. (Section 82048; Regulation 18700.) If you perform occasional work for GBN, GBN or the organizations that pay you to facilitate scenario planning sessions, would become sources of income to you under Section 87103(c). Therefore, you would be prohibited from making or participating in a governmental decision that would have a material financial effect on these sources of income under the Act. Enclosed is a pamphlet entitled “California’s Conflict of Interest Laws for Public Officials” which summarizes the Act’s conflict of interest laws.

In addition, you should check with the Senate Committee on Legislative Ethics to make sure that performing part-time work for GBN is consistent with the Code of Ethics that applies to legislative employees (Government Code section 8920). This section of the Government Code is outside the jurisdiction of the Fair Political Practices Commission.

Further, as you may be aware, section 89502(c) provides that no designated employee of a state agency shall accept any honorarium from any source if the employee would be required to report the receipt of income from that source on his or her statement of economic interests. The term "honorarium" is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501(a).) "Speech given," as used in section 89501, means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. (Regulation 18931.1.) However, section 89501(b)(1) provides that the term "honorarium" does not include: "[e]arned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business or profession is making speeches." Earned income differs from an honorarium because a payment characterized as "earned income" is based on the market value of *services* rendered, while an honorarium reflects values associated with the *status* of the speaker.

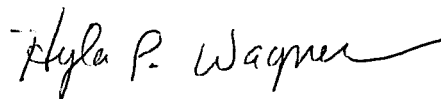
The predominant activity of the occasional work you plan to perform for GBN is consulting to businesses, not making speeches. The income you receive from GBN would not constitute an honorarium, as it is earned income for personal services customarily provided in connection with the practice of a bona fide business.

Finally, you should also be aware of the prohibition concerning influencing prospective employment contained in section 87407 of the Act. That section provides that no designated employee of the Legislature shall make, participate in making, or use his or her official position to influence, any governmental decision directly relating to any person with whom he or she is negotiating prospective employment.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Staff Counsel, Legal Division

Enclosure
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