



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

July 5, 2007

Emily Barrett
Pillsbury Winthrop Shaw Pittman, LLP
50 Fremont Street
San Francisco, California 94105

**RE: Your Request for Informal Assistance
Our File No. I-07-099**

Dear Ms. Barrett:

This letter is in response to your request for advice regarding the lobbying provisions of the Political Reform Act (the "Act").¹ Because your request seeks general guidance related to a hypothetical question, we are treating your request as one for informal assistance.² Additionally, please note that the Commission does not provide advice relating to past conduct. This letter should not be construed as assistance on any conduct that may have already taken place. (See Regulation 18329(b)(8)(A).)

QUESTIONS

1. For purposes of the Act's lobbying provisions (Section 86100 et seq.), is contacting a member or employee of the Legislature for assistance in a quasi-judicial proceeding before an agency other than the Legislature an attempt to influence a legislative or administrative action?
2. Is a lobbying firm prohibited from accepting or agreeing to accept a contingent payment for contacting a member or employee of the Legislature for assistance in a quasi-judicial proceeding?

CONCLUSIONS

1. For purposes of the Act's lobbying provisions, contacting a member or employee of the Legislature for assistance in a solely quasi-judicial proceeding before an

¹ Government Code Sections 81000-91014. Commission regulations appear at Title 2, Sections 18109-18997, 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(c)(3), copy enclosed.)

agency other than the Legislature is not an attempt to influence a legislative or administrative action.

2. Section 86205(f) does not prohibit a lobbying firm from accepting or agreeing to accept a contingent payment for contacting a member or employee of the Legislature for assistance in a solely quasi-judicial proceeding before an agency other than the Legislature as long as the payment is not contingent upon a proposed legislative or administrative action.

FACTS

Pillsbury, Winthrop, Shaw, Pittman is a registered lobbying firm. As a representative of the firm, you ask for guidance under the Act's lobbying provisions. Specifically, you seek assistance in determining the firm's obligations, under the Act, if the firm contacts a member or employee of the Legislature for assistance in a quasi-judicial proceeding before an agency other than the Legislature.

ANALYSIS

The Act regulates the activities of lobbyists, lobbying firms and lobbyist employers. (Sections 86100 et seq.) These terms are defined in the Act as individuals or entities that make or receive payments for the purpose of influencing legislative or administrative action. (Sections 82038.5, 82039, 82039.5) Furthermore, Section 86205(f) prohibits lobbyist and lobbying firms from accepting or agreeing to accept any payment contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.

Section 82032 defines "influencing legislative or administrative action" as follows:

"'Influencing legislative or administrative action' means 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 analyses."

We turn first to the question of whether contacting a member or employee of the Legislature for assistance in a quasi-judicial proceeding before an agency other than the Legislature would be considered "influencing a legislative action." For purposes of the Act, Section 82037 defines "legislative action" as follows:

"'Legislative action' means the drafting, introduction, consideration, modification, enactment or defeat of any bill, 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 official capacity. 'Legislative action' also means the action of the Governor in approving or vetoing any bill."

Generally, "legislative action" is limited to bills and other matters pending before the State Legislature. (See *Russell* Advice Letter, No. 96-354; *Craven* Advice Letter, No. A-93-057; and *Bagatelos* Advice Letter, No. I-91-202.) Thus, contacting a member or employee of the Legislature for assistance in a quasi-judicial proceeding before an agency other than the Legislature would not be considered influencing a "legislative action."³

We turn next to the question of whether contacting a member or employee of the Legislature for assistance in a quasi-judicial proceeding before an agency other than the Legislature would be considered "influencing an administrative action." For purposes of the Act, Section 82002(a) defines the term "administrative action" as follows:

"'Administrative action' means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or any other action in any ratemaking proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2."

However, you have limited your questions to quasi-judicial proceedings of an administrative agency. Nothing in the above definition indicates that the term "administrative action" includes a quasi-judicial proceeding. Additionally, the Commission has previously determined that "quasi-judicial proceedings" are not considered "administrative actions." (See *In re Evans* (1978) 4 FPPC Ops. 84 and *In re Leonard* (1976) 2 FPPC Ops. 54.) Generally, quasi-judicial proceedings determine the rights of specific parties or apply existing law to specific facts. (See *In re Curiel* (1983) 8 FPPC Ops. 1.) For example, adjudicatory proceedings such as licensing or permit proceedings are not considered "administrative actions." (See *Erenbaum* Advice Letter, No. A-03-124; *Abbott* Advice Letter, No. A-88-164; and *Teitelbaum* Advice Letter, No. A-86-277.) Accordingly, contacting a member or employee of the Legislature for assistance in a quasi-judicial proceeding before an agency other than the Legislature would not be considered "influencing an administrative action."⁴

³ While we conclude that contacting a member or employee of the Legislature for assistance in a proceeding before an agency other than the Legislature would not be considered influencing a "legislative action," we must caution that this conclusion applies only to the extent that the contact is related solely to a quasi-judicial administrative action of an agency other than the Legislature.

⁴ We note that Regulation 18202 provides additional guidance for determining when a proceeding is not considered a quasi-judicial proceeding for purposes of Section 82002. Should you need additional assistance in determining whether any particular proceeding qualifies as a "quasi-legislative proceeding,"

In light of the analysis above, we further conclude that the prohibition in Section 86205(f) would not extend to a lobbying firm accepting or agreeing to accept a contingent payment for contacting a member or employee of the Legislature for assistance in a solely quasi-judicial proceeding before an agency other than the Legislature as long as the payment is not be contingent upon a proposed legislative or administrative action.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Brian G. Lau
Counsel, Legal Division

BGL:jgl

Enclosure

as opposed to a "quasi-judicial proceeding," it is advisable that you seek further assistance providing all relevant facts.