



## FAIR POLITICAL PRACTICES COMMISSION

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September 12, 2008

Ernest Silva  
Murdoch Walrath & Holmes  
1130 K Street, Suite 210  
Sacramento, California 95814

**RE: Your Request for Informal Assistance  
Our File No. I-08-147**

Dear Mr. Silva:

This letter is in response to your request for advice regarding the lobbying provisions of the Political Reform Act (the "Act").<sup>1</sup> Because you seek general guidance, we are treating your request as one for informal assistance.<sup>2</sup> 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).)

### QUESTION

Does Section 86205(f) prohibit your firm, which provides both advocacy and consulting services to school districts and charter schools, and members of your firm who are registered lobbyists, from receiving a fee based on a percentage of the funds your client is awarded from a state agency, where your firm's services consist of (a) assisting with the compilation of information necessary to obtain state funding, (b) meeting with state agency representatives to answer questions about your client's submittals, and (c) meeting with state agency representatives to explain how your client's project meets the agency's requirements?

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> 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.)

## CONCLUSION

No. Section 86205(f) does not prohibit a lobbying firm from receiving a fee based on a percentage of the funds received by its client from a state agency where the services provided by the firm consist of assisting the client in obtaining the state funding and the payment is not contingent upon a proposed legislative or administrative action.

## FACTS

You are a registered lobbyist with Murdoch Walrath & Holmes, a firm that provides both advocacy and consulting services for school districts and charter schools involved in the School Facility Program ("SFP") under Education Code Section 17070.10 et seq. The SFP provides state funding in phases for building school facilities ("preliminary apportionments," "advanced apportionments," and "final apportionments.") Among the services you would like to provide for your clients for a fee based on a percentage of the funds they receive are (a) assistance in gathering information for their applications for advanced apportionments and final apportionments, (b) meeting with state agency representatives to answer questions about the applications submitted by your client and (c) meeting with state agency representatives to explain how your client's project meets the agency's requirements. You have asked us four questions based on these facts. However, based on our analysis of your first question, we need not address your other questions.

## ANALYSIS

Section 86205(f) prohibits a lobbyist or lobbying firm from accepting or agreeing to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action." Clearly, your facts do not implicate any legislative action. (See Section 82037.) We, therefore, turn our analysis to the term "administrative action" which is defined in Section 82002(a) as follows:

"(a) 'Administrative action' means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any state agency of any rule, regulation, or 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."

A determination by the state agency whether to fund your client's project does not involve a "proposal, drafting, development, consideration, enactment, or defeat by any state agency of any rule, or regulation or other action in any ratemaking proceeding." Further, such a determination does not involve a "proposal" or "consideration" of "other action" in a "quasi-legislative proceeding" inasmuch as Regulation 18202(a)(6) provides

that a proceeding in which action is taken "awarding a grant or contract" is not a "quasi-legislative proceeding" for the purposes of Section 82002. Hence, the provisions of the Act, and specifically the prohibition of Section 86205(f), are not applicable to proceedings regarding the awarding of a grant, such as an SFP grant, by a state agency.

In light of the analysis above, we conclude that the prohibition in Section 86205(f) does not prevent your lobbying firm from receiving a fee for assisting school districts and charter schools in pursuit of SFP funds in the form of a percentage of the funds awarded to your client by a state agency because the payment is not made 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

A handwritten signature in cursive script, appearing to read "Valentina Joyce".

By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl  
Enclosure