



FAIR POLITICAL PRACTICES COMMISSION

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April 20, 2011

Peter C. Williams
Chief Compliance Officer
Chicago Equity Partners, LLC
180 North LaSalle Street, Suite 3800
Chicago IL 60601

Re: Your Request for Informal Assistance
Our file No. I-11-031

Dear Mr. Williams:

This letter responds to your request for advice regarding the lobbying provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your request is general in nature and provides limited facts, we are treating it as a request for informal advice.²

QUESTIONS

1. Does Assembly Bill 1743 ("AB 1743" or "the Bill") apply retroactively to contracts that your firm had with a California public retirement system before the Bill took effect?
2. Does the Bill apply to the people in your firm who are making financial trades and managing a portfolio pursuant to placement agents in your firm that currently work with California State Teacher Retirement System ("CalSTRS")?
3. To what level of employee does the Bill apply? Your firm has placement agents and client service personnel that respond to Requests for Proposals ("RFPs"), communicate

¹ 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.

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).

with other California governmental entities, and attend final presentations; are they required to register as lobbyists?

4. Does the Act apply to California municipalities, counties, or other local jurisdictions?

CONCLUSIONS

1. No. Assembly Bill 1743 ("AB 1743" or "the Bill") does not have a "reach back" provision that would affect contracts into which parties entered before AB 1743 took effect. The Bill does not apply to contracts that the parties entered into before the Bill's effective date, but does apply to any contract made or amended after the effective date.
2. Section 86300 exempts individuals working in the capacity of a state employee from the definition of lobbyist. To the extent that people in your firm are making trades under the direction of CalSTRS, this provision may apply.
3. If the people in your firm who are working to obtain a contract with a California public retirement or pension system fit within the definition of placement agent in Section 82047.3, and no exception applies, they must register as lobbyists under the provisions of the Act.
4. In this instance, the Act does not apply to local jurisdictions. The Bill, however, states that if a local jurisdiction contains provisions for lobbyists, than those provisions also apply to placement agents. To determine the applicable rules, you will need to contact each jurisdiction in which you intend to work before approaching the local retirement system.

FACTS

You are the compliance officer for Chicago Equity Partners, a firm that manages a large cap equity portfolio of common stocks for the California State Teacher Retirement System CalSTRS. Your firm obtained a contract with CalSTRS over 10 years ago through a competitive bidding process. The parties made updates to the contract in February of 2011. Your firm is registered with the Securities and Exchange Commission and has accepted certain fiduciary standards in its contract with CalSTRS.

Your firm's contract with CalSTRS requires you to manage a "large cap portfolio of common stocks" as a broker dealer and commit to ensuring that the portfolio performs on a scale that yields a certain percentage of success over the performance of the S&P 500.

ANALYSIS

The legislature passed, and the governor signed, Assembly Bill 1743 ("the Bill" or "AB 1743"), a series of laws adding to the Government Code. The Bill makes a key change to the

Act to include “placement agent” in the Act’s definition of “lobbyist.” The rules and regulations regarding lobbyists therefore now apply to placement agents, per this Bill.

The Bill makes several amendments and additions to the Act to effectuate the overall goal of including placement agents under the definition of lobbyists. Specifically, the Bill:

- Amends the definition of “administrative action” to include decisions by a state agency to enter into a contract to invest state public retirement system assets on behalf of a state public retirement system. (Section 82002(a)(2).)
- Adds a definition of “external manager” as either “a person who is seeking to be, or is, retained by a state public retirement system in California to manage a portfolio of securities or other assets for compensation” or “a person who is engaged, or proposes to be engaged in the business of investing, reinvesting, owning, holding, or trading securities to a state public retirement system in California.” (Section 82025.3.)
- Adds “placement agent” to the definition of “lobbyist.” (Section 82039(a)(2).)
- Adds a definition for “placement agent.” (Section 82047.3, copy enclosed.)

Question One

Does Assembly Bill 1743 (“AB 1743” or “the Bill”) apply retroactively to contracts that your firm had with a California public retirement system before the Bill took effect?

The Bill does not state that its provisions apply retroactively. We therefore do not read the Bill to look back to contracts that parties signed before it took effect or to change any previous relationships. Your firm obtained a CalSTRS contract several years ago, and you stated that the contract was updated in 2011. To the extent that you make updates to the contract or enter into new or additional contracts, the Bill’s provisions apply. You could then determine whether the exceptions to the definition of “placement agent” also apply to your situation.³

Question Two

Does the Bill apply to the people in your firm who are making financial trades and managing a portfolio pursuant to placement agents in your firm that currently work with CalSTRS?

Your firm’s contract with CalSTRS provides that CalSTRS will fund a portfolio that your firm will manage. CalSTRS funds the portfolio initially, consults with your firm on its progress, accepts input on funding decisions affecting the portfolio, and expects a return of a certain percentage over the S&P 500. You advise CalSTRS in a limited role and under its direction and do not represent CalSTRS in other processes.

³ Your facts state that your firm is registered with the Securities and Exchange Commission. Please note that the exception states that the external manager must be registered as an investment adviser or a broker-dealer with the Securities Exchange Commission. (Section 82047.3(c)(1).)

Regulation 18239 expounds on the definition of lobbyist and states, “[e]xcept as provided in Section 86300 . . . if an individual is a placement agent . . . he or she is a lobbyist.” Section 86300(a) explains that an employee who is working on behalf of the State of California is not a lobbyist by virtue of that work. This exception invites an inquiry as to whether your broker dealers who are managing funds for CalSTRS fit within the exception under Section 86300(a).

We have previously stated that under Section 86300, “paid consultants who only provide advice to government agency clients and who do not represent the client-agency before other agencies or in other processes are analogous to employees of the client-agency.” (See *Kelso Advice Letter, A-97-151*.) We have therefore excluded from the definition of lobbyist those consultants whose duties extend only to providing advice to the agency. The same analysis applies to your firm’s consulting work for CalSTRS.

Under these limited circumstances of performing trades for CalSTRS under its direction, we find that your efforts are not contemplated in the definition of external manager and the persons who are trading on behalf of CalSTRS are analogous to agency employees.

Question Three

To what level of employee does the Bill apply? Your firm has placement agents and client service personnel that respond to Requests for Proposals (“RFPs”), communicate with other California governmental entities, and attend final presentations; are they required to register as lobbyists?

The legislature has instructed the Commission, through AB 1743, to treat placement agents as lobbyists under the Act. The Bill defines a placement agent broadly, as “an individual hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external manager, or on behalf of another placement agent, who acts or has acted for compensation as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a state public retirement system in California or an investment vehicle, either directly or indirectly.”

Sections 82047.3(b) and (c) provide exceptions to the definition of “placement agent.” Section 82047.3(b) states that notwithstanding the definition of placement agent, “an individual who is an employee, officer, director, equity-holder, partner, member, or trustee of an external manager and who spends one-third or more of his or her time, during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager is not a placement agent.” Additionally, Section 82047.3(c) states that “an employee, officer, or director of an external manager, or of an affiliate of an external manager, is not a placement agent if all of the following apply:

- (1) “The external manager is registered as an investment adviser or a broker-dealer with the Securities and Exchange Commission or, if exempt from or not subject to registration with the Securities and Exchange Commission, any appropriate state securities regulator.

- (2) The external manager has been selected through a competitive bidding process subject to subdivision (a) or Section 22364 of the Education Code or subdivision (a) or Section 20153 of [the Government] code.
- (3) The external manager has agreed to a fiduciary standard of care, as defined by the standards of conduct applicable to the retirement board of a public pension or retirement system and set forth in Section 17 of Article XVI of the California Constitution, when managing a portfolio of assets of a state public retirement system in California.” (Section 82047.3(c).)

If the people at your firm who are working on the CalSTRS account and who would otherwise qualify as placement agents fit within one of these two exceptions, registration is not necessary.

Question Four

Does the Act apply to California municipalities, counties, or other local jurisdictions?

The Bill regarding Placement Agents does apply to local jurisdictions (see Sections 7513.8, 7513.86, and 7513.87 of the Bill), but these provisions are not within the Act. For explanations of how the Bill applies to a local jurisdiction, we recommend that you contact that jurisdiction.

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

Sincerely,

John W. Wallace
Assistant General Counsel



By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl

Enclosures