



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

July ##, 2011

Steven G. Churchwell
DLA Piper
400 Capital Mall, Suite 2400
Sacramento, CA 95814-4428

Re: Your Request for Informal Assistance
Our File No. I-11-108

Dear Mr. Churchwell:

This letter responds to your request for advice on behalf of Harvest Farms regarding the lobbyist provisions of the Political Reform Act (the "Act").¹ Because your request seeks general guidance and is not limited to a specific appearance or communication, 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).)

QUESTION

Are the lobbyist provisions of the Act triggered if an individual, who is hired by a private company, contacts legislators to urge the legislators to influence a state agency to issue a new request for proposals?

CONCLUSION

The Act's lobbyist provisions are not triggered because contacting a legislator solely for assistance in influencing a state agency, other than the Legislature, to issue a new request for proposals would not be considered "influencing a legislative or administrative action." However, we caution that this conclusion is strictly limited to communications or appearances regarding the issuance of a request for proposals by a state agency other than the Legislature.

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.)

The lobbyist provisions will be triggered if at any time the communications are broadened to encompass any matter or potential matter before the Legislature.

FACTS

Harvest Farms is a company that produces a specialty boxed lunch for inmates. They have had a contract with the Department of General Services (the "DGS") for several years, and the California Department of Corrections and Rehabilitation (the "CDCR") purchased boxed lunches using the DGS master service agreement. However, this contract has recently expired.

In 2010, the Prison Industry Authority (the "PIA") attempted to replace Harvest Farm's boxed lunches with its own. The PIA is a quasi-public entity that utilizes inmate labor to produce various goods for sale to California government agencies. By law, if the PIA produces a product or offers a service, state and local agencies must purchase the product or service from the PIA. DGS decided not to issue a new contract to Harvest Farms after being informed that the PIA would be producing the boxed lunches. The CDCR is still purchasing boxed lunches from Harvest Farms under a separate state contract.

In light of the foregoing, Harvest Farms has contracted with an individual to seek the issuance of a new Request for Proposals ("RFP") for a private supplier of boxed lunches. In furtherance of this goal, the individual would like to meet with legislators to (1) convince the legislators that it is in the public's best interest for the DGS to issue a new RFP and (2) urge the legislators to contact the DGS and CDCR to request that a RFP be issued. Communications with legislators would be limited to the issuance of a new RFP. There would be no contact concerning any legislation or regulation.

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) Accordingly, the determinative question we must answer is whether contacting a legislator solely for assistance in influencing a state agency, other than the Legislature, to issue an RFP would be considered "influencing 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."

For purposes of the lobbyist provisions, 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 legislator solely for assistance in influencing a state agency, other than the Legislature, to issue an RFP would not be considered “influencing a legislative action” so long as the assistance is limited to the proceeding before the state agency.

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.”

For purposes of Section 82002, none of the following are “administrative actions” because they are not considered “quasi-legislative” proceedings pursuant to Regulation 18202(a):

“(1) A proceeding to determine the rights or duties of a person under existing laws, regulations or policies.

“(2) A proceeding involving the issuance, amendment or revocation of a permit or license.

“(3) A proceeding to enforce compliance with existing law or to impose sanctions for violations of existing law.

“(4) A proceeding at which an action is taken involving the purchase or sale of property, goods or services by such agency.

“(5) A proceeding at which an action is taken which is ministerial in nature.

“(6) A proceeding at which an action is taken awarding a grant or contract.

“(7) A proceeding involving the issuance of a legal opinion.”

Based upon the facts you have provided, the issuance of a new RFP is a proceeding involving the purchase or sale of property, goods or services. Accordingly, contacting a legislator solely for assistance in influencing a state agency, other than the Legislature, to issue an RFP would not be considered "influencing an administrative action."

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

Sincerely,

John W. Wallace
Assistant General Counsel



By: Brian G. Lau
Commission Counsel, Legal Division

BGL:jgl

Enclosure