



FAIR POLITICAL PRACTICES COMMISSION

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April 1, 2014

Kathryn E. Donovan
Pillsbury Winthrop Shaw Pittman, LLP
2600 Capitol Avenue, Suite 300
Sacramento, CA 95816-5930

Re: Your Request for Advice
Our File No. A-14-044

Dear Ms. Donovan:

This letter responds to your request for advice on behalf of your law firm, Pillsbury Winthrop Shaw Pittman, LLP (“Pillsbury”), regarding the lobbying provisions of the Political Reform Act (the “Act”).¹

QUESTION

Pillsbury is simultaneously providing legal representation to DIRECTV in quasi-judicial proceedings on tax matters before counties and lobbying the State Board of Equalization (“BOE”) to change or establish certain tax rules that, if adopted, would in some cases result in a more favorable resolution for DIRECTV in the county proceedings. If Pillsbury, a lobbying firm, were to be paid on a contingent fee basis for its representation of DIRECTV in the county proceedings, would it violate the Act’s ban against lobbyists and lobbying firms receiving payments contingent on the outcome of proposed legislative or administrative action?

CONCLUSION

No. As explained below, even though Pillsbury is generally subject to the Act’s ban against lobbyists and lobbying firms receiving payments contingent on the outcome of proposed legislative or administrative action, its representation of DIRECTV in the county proceedings is separate from its lobbying activities in attempting to influence the decisions of the BOE.

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.

FACTS

Pillsbury is a law firm and, because it employs lobbyists who appear before California state agencies to influence administrative or legislative action, is also a lobbying firm under Section 82038.5 of the Act. Pillsbury represents DIRECTV in two distinct but somewhat related matters. In the first matter, Pillsbury represents DIRECTV in 54 or so counties in California in appealing the amount of personal property assessed values placed on certain high-tech equipment during the past few years and requesting a refund of a portion of the property taxes paid on such assessments. Currently, DIRECTV is compensating Pillsbury for these services based on applicable hourly rates. DIRECTV has expressed an interest in entering into an agreement to compensate Pillsbury for these services on a contingent fee arrangement, whereby the firm would be compensated based on a percentage of the tax refunds and future tax savings realized in the county proceedings.

In the second matter, Pillsbury represents DIRECTV before the BOE concerning a potential change to the Assessors' Handbook Section 581 ("AH 581"). According to the BOE website, the Assessors' Handbook is a series of manuals developed by the staff of the BOE in an open process, with input from assessors, industry representatives, and other interested parties.

"The objective of the Assessors' Handbook is to give county assessors, their staff, and other interested parties an understanding of the principles of property assessment and real and personal property appraisal for tax purposes. The Assessors' Handbook is intended to serve as a guide for the appraisal and assessment of real and personal property. Additionally, the Assessors' Handbook presents the BOE staff's interpretation of rules, laws, and court decisions on property assessment."

(<http://www.boe.ca.gov/proptax.es/abconthtm.>)

The BOE has asked the County Assessors' Association to review the information that Pillsbury has provided in connection with the AH 581 change request and to make recommendations to the BOE concerning such proposed changes to AH 581. The County Assessor's offices of Santa Clara and Placer Counties are currently performing this task for the Association. The Assessor's offices in two or three more counties may join Santa Clara and Placer in performing this review task.

You indicate that the services rendered by Pillsbury in the first matter involve attempts to influence the decisions of county officials regarding the tax assessment appeals and future assessments, which are quasi-judicial proceedings. If the county officials (including first the county Assessor's office and then the Assessment Appeals Board for such county) deny DIRECTV's request for a reduction in the pertinent assessments, DIRECTV may file a refund suit in the Superior Court. None of these county administrative or judicial decisions are reviewable by the BOE. In the second matter, regarding the potential change to AH 581, you believe that Pillsbury's services appear to be lobbying under state law and, consequently,

Pillsbury has registered DIRECTV with the California Secretary of State as a lobbying client and Pillsbury will bill DIRECTV for these services on an hourly basis. If the BOE adopts the changes to AH 581 as Pillsbury advocates, or some variation thereof, the new provisions would provide guidance that county assessors and assessments appeals boards throughout California may rely on to determine the property tax assessments imposed on the high-tech equipment at issue for DIRECTV. Thus, Pillsbury and DIRECTV both hope that the proposed revisions to AH 581, if adopted, would help to achieve a satisfactory and possibly more expeditious resolution with respect to the various county tax proceedings in which Pillsbury represents DIRECTV.

ANALYSIS

As a lobbying firm defined in Section 82038.5, Pillsbury is precluded, as are lobbyists, from accepting or agreeing to accept any payment “contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.” (Section 86205(f).)

Also, as you are aware, both the term “legislative action” and the term “administrative action,” as defined under the Act, only involve actions to be taken by the Legislature and state agencies, and not actions by local agencies such as counties. (Sections 82037, 82002 and 82049.)

Therefore, Pillsbury is not, per se, precluded under the Act from accepting a contingent fee payment in connection with its representation of DIRECTV in county proceedings. Instead, the ban would only apply if the county proceedings are in some way part of legislative or administrative action before a state agency. In this regard, then, you are essentially asking whether the county tax proceedings and BOE’s consideration of changing or establishing tax laws applicable to the county proceedings are basically the same legislative or administrative action before BOE. We do not view this to be the case. Although the decisions of the BOE regarding the contents of AH 581 constitute “administrative action” under the Act² and may ultimately have an impact on the outcome of the county proceedings, these are nevertheless entirely different actions by a different governmental body at a different level of government. Accordingly, in these circumstances, Pillsbury would not violate Section 86205(f)’s ban on accepting a contingent fee payment in its representation of DIRECTV in the county proceedings.³

² Section 82002(a)(1) provides, in pertinent part, that “administrative action” includes the “proposal, drafting, development, consideration” of any rule or regulation by a state agency. Since BOE’s consideration and ultimate decision on what to include in the AH 581 may or will change or establish certain tax rules, these actions fall within the definition of “administrative action.”

³ You have further indicated that Pillsbury will be charging its work before the BOE on an hourly basis and will be careful to separate the time spent on the county proceedings from the BOE proceedings. In addition, to the extent that there is any question about whether time billed relates to the BOE proceedings, you indicate that Pillsbury will bill that time on an hourly basis as part of the BOE proceeding services. Pillsbury will not be required to include on its lobbying reports information concerning its compensation and expenses related solely to its work on the county proceedings.

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

Sincerely,

Zackery P. Morazzini
General Counsel

A handwritten signature in black ink that reads "Scott Hallabrin". The signature is written in a cursive style with a large, looping initial "S".

By: Scott Hallabrin
Counsel, Legal Division

SH:jgl