

Fair Political Practices Commission
MEMORANDUM

To: Chairman Schnur, Commissioners Garrett, Hodson, Montgomery and Rotunda

From: Heather Rowan, Commission Counsel
Scott Hallabrin, General Counsel

Subject: Adoption of Amendments to Regulation 18239 – Definition of Lobbyist

Date: January 18, 2011

Proposed Commission Action and Staff Recommendation: Adopt the proposed amendments to Regulation 18239, which adds “placement agents,” as defined in Section 82047.3 effective January 1, 2011, to the definition of “lobbyist” in the Act.

Background: The Act regulates the activities of state lobbyists. (See Sections 86100 through 86300.) The Act defines the term “lobbyist” in Section 82039, and Regulation 18239 details which individuals qualify as lobbyists under Section 82039.

Assembly Bill 1743, passed by the Legislature during the recent legislative session and effective January 1, 2011, amended Section 82039 to add “placement agents” to the Act’s definition of “lobbyist.” Specifically defined in new Section 82047.3, placement agents are essentially individuals who are compensated as intermediaries in connection with the offer or sale of securities, assets, or specified services to a state public retirement system.

Since existing Regulation 18239 defines which individuals are lobbyists for purposes of the Act, staff recommends including placement agents in the regulation so that the regulation provides a complete summary of who will be subject to the Act’s rules regulating lobbyists.

Additional Future Regulations: Assembly Bill 1743 contained several other provisions relating to placement agents and their activities, which may necessitate additional regulations on this subject. Staff will be meeting in the future with representatives of other state agencies that regulate placement agents, the Secretary of State’s Office, and affected parties to further explore these issues. This regulation is, therefore, the first step in providing the public information on applying the newly enacted laws regarding placement agents.

1 Amend 2 cal. Code Regs. Section 18239 to read:

2 **§ 18239. Definition of Lobbyist.**

3 (a) Introduction.

4 (1) If an individual engages in direct communication, other than administrative
5 testimony, with a qualifying official for the purpose of influencing legislative or administrative
6 action on behalf of any person other than his or her employer, apply ~~Government Code section~~
7 Section 82039 and subdivision (b) of this regulation to determine if the individual is a lobbyist.

8 (2) If an individual engages in direct communication, other than administrative
9 testimony, with a qualifying official for the purpose of influencing legislative or administrative
10 action only on behalf of his or her employer, apply ~~Government Code section~~ Section 82039 and
11 subdivision (c) of this regulation to determine if the individual is a lobbyist.

12 (3) If an individual is a “placement agent” as defined in Section 82047.3, he or she is a
13 lobbyist for purposes of the Act, regardless of the definitions in subdivisions (b) through (d),
14 below.

15 (b) A lobbyist is an individual who receives or becomes entitled to receive \$2,000 or
16 more in compensation in any calendar month for engaging in direct communication, other than
17 administrative testimony, with one or more qualifying officials for the purpose of influencing
18 legislative or administrative action.

19 (c) A lobbyist is an individual who spends one-third or more of the time, in any calendar
20 month, for which he or she receives compensation from his or her employer, engaging in direct
21 communication, other than administrative testimony, with one or more qualifying officials for
22 the purpose of influencing legislative or administrative action.

23 (d) Definitions.

1 (1) "Administrative testimony" means either of the following:

2 (A) Influencing or attempting to influence administrative action by acting as counsel in,
3 appearing as a witness in, or providing written submissions, including answers to inquiries,
4 ~~which that~~ become part of the record of any regulatory or administrative agency proceeding:

5 (i) ~~Which That~~ is conducted as an open public hearing for which public notice is given;

6 (ii) Of which a record is created in a manner ~~which that~~ makes possible the creation of a
7 transcript; and

8 (iii) ~~With respect to which Where~~ full public access is provided to ~~such the~~ record or
9 transcript and to all written material ~~which that~~ is submitted ~~to become as~~ part of the record.

10 (B) Any communication made at a public hearing, public workshop, public forum, or
11 included in the official record of any proceeding, as defined in ~~Government Code~~ Section
12 82002(b) or (c), before the California Public Utilities Commission.

13 (2) "Compensation" means any economic consideration, other than reimbursement for
14 reasonable travel expenses, i.e., expenses for transportation plus a reasonable sum for food and
15 lodging.

16 (3) "Direct communication" means appearing as a witness before, talking to (either by
17 telephone or in person), corresponding with, or answering questions or inquiries from, any
18 qualifying official, either personally or through an agent who acts under one's direct supervision,
19 control, or direction.

20 (A) Direct communication does not include any request for or provision of purely
21 technical data or analysis to an administrative agency by a person who does not otherwise
22 engage in direct communication for the purpose of influencing legislative or administrative
23 action.

1 (B) For the purpose of determining whether an individual qualifies as a lobbyist pursuant
2 to subdivisions (b) or (c), an individual does not engage in "direct communication" when he or
3 she meets or speaks with a qualifying official in the company of a registered lobbyist retained by
4 the individual or individual's employer or by a bona fide trade association or membership
5 organization of which the individual or individual's employer is a bona fide member.

6 (4) "Influencing legislative or administrative action" means communicating directly or
7 taking any other action for the principal purpose of supporting, promoting, influencing,
8 modifying, opposing, delaying, or advancing any legislative or administrative action.

9 (5) "Qualifying official" means:

10 (A) Any elected state official;

11 (B) Any legislative official;

12 (C) Any appointed, elected or statutory member or director of any state agency;

13 (D) Any staff member of any state agency who makes direct recommendations to the
14 persons listed in subdivision (5)(C) of this subdivision, or who has decision-making authority
15 concerning such recommendations.

16 NOTE: Authority cited: Section 83112, Government Code. Reference: Section 82039,
17 Government Code.