



March 14, 2017

The Honorable Mark Stone
 Chair, Assembly Judiciary Committee
 1020 N Street, Room 104
 Sacramento, California 95814

**Re: AB 814 (Bloom) – Consumer protection: enforcement powers.
 As Introduced February 15, 2017 – OPPOSE**

Dear Assembly Member Stone,

The above organizations must respectfully oppose Assembly Bill 814 (Bloom), which would provide pre-litigation subpoena authority to city attorneys of large (populations over 750,000) cities. We oppose this expansion as it is unnecessary and overly burdensome for businesses that provide millions of jobs and economic growth for California.

Pre-Litigation Subpoena Power Expansion is Unnecessary

Assembly Bill 814 unnecessarily expands pre-litigation subpoena power to city attorneys of cities with a population greater than 750,000 and therefore would apply to the city attorneys of San Diego, Los Angeles, San Jose, and San Francisco.

Extending pre-litigation subpoena authority will unfairly burden businesses with the full legal obligations of a lawsuit, when there is not enough evidence to charge them with wrongdoing. Pre-litigation subpoenas can almost be unlimited in scope, as there is no charge on which it's based (a charge would narrow the focus to an actual claim of wrongdoing). Businesses are required to respond to the subpoena, pay lawyers to handle the response, and manage public relations issues that arise as a result of the investigation. Further, pre-litigation subpoena power may result in substantial amounts of confidential customer information being released to governmental entities that do not have a demonstrated track record with cyber security or the resources to provide sufficient safeguards for this kind of information. This poses a privacy concern for the public.

Current Law Allows Ample Prosecution of Corporate Wrongdoers

Current law already provides multiple avenues for bringing an unfair practice charge against a business: the Attorney General, county district attorneys, county counsel and city attorneys in cities with a population of 750,000 or more can all file suit under §17200 of the Business and Professions Code. Individuals who have suffered harm can also sue under both §17200, as well as the Consumer Legal Remedies Act. The Attorney General and district attorneys already have pre-litigation subpoena power, because they are full time prosecutors. Lawmakers have determined that great authority is warranted for prosecutors, whose role is to protect the public and to do justice. Additionally, prosecutors often have investigators and fact finders (police officers and/or investigative staff), who can help them find evidence of wrongdoing before they must resort to the extreme response of a subpoena.

Role of a City Attorney Doesn't Justify this Authority

The Attorney General serves as the chief law enforcement officer in the State, and district attorneys provide that role for their respective counties. A district attorney's most essential duty is investigating and prosecuting criminal offenses on behalf of the people. As such, they are held to high ethical obligations toward justice. It is therefore understandable that such tools as pre-litigation subpoena power are afforded to full-time prosecutors. As such, prosecutors have their own special legal ethics, articulated in the American Bar Association's Model Rule of Professional Conduct Rule 3.8 (http://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_3_8_special_responsibilities_of_a_prosecutor.html). These rules include limits on subpoena power – only using it sparingly, only when there is no other way to obtain the information, and only if the information is necessary for the prosecution of the case.

In contrast, city attorneys have a much broader role than do their prosecutorial brethren. City attorneys advise their cities on legal matters regarding city business, disciplining city employees, drafting ordinances and resolutions and staffing public meetings (League of California Cities, "*Practicing Ethics: A Handbook for Municipal Employers*," 2014, available here <http://www.cacities.org/practicingethics>). They settle lawsuits against the city and may negotiate contracts with businesses who provide services to the city.

The powers afforded to district attorneys under the Government Code are fully intended to remain with California's chief law enforcement officers. This power should not to be extended to attorneys who do not harbor the sole duty of investigating and prosecuting crime.

Creates Further Exposure to Unjustified Lawsuits

Some local prosecutors have used their prosecutorial discretion to sue businesses to extract large settlements, and utilizing contingency-fee attorneys that aren't tasked with the same neutrality and public-interest motives as their public counterparts. Expanding pre-filing subpoena power to city attorneys will give this immense authority to those who may not have the ethical responsibility to wield it judiciously.

In summary, AB 814 is a solution to a problem that does not exist. While the author explains in the bill's fact sheet that the bill's provisions would, "...alleviate an already overburdened judicial system," our organizations would offer that extending this power beyond those who are actually tasked with the investigation and prosecution of crime would further burden that system and expand meritless civil liability for California businesses. The power of pre-litigation subpoenas already rests with the Attorney General and with district attorneys – they have and continue to protect the public. We fear that expanding this power to city attorneys may result in fishing expeditions and unnecessary costs to business and consumers.

For these reasons, we urge your **NO** vote on AB 814. Should you have any questions concerning this letter, please contact Faith Conley, CJAC Vice President of Legislative Affairs, at (916) 443-4900.

cc: The Honorable Richard Bloom, California State Assembly
Members, Assembly Judiciary Committee
Allison Merrilees, Consultant, Assembly Judiciary Committee
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