

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by)	No. 75-006
Les H. Cohen,)	May 1, 1975
Advocation, Inc.)	
)	

BY THE COMMISSION: We have been asked the following question by Les H. Cohen of Advocation, Inc.:

Rohrdata Systems, a division of the Rohr Corporation, has a contract with the Senate and Assembly to produce and mail letters and questionnaires to constituents of legislators. Advocation, Inc. acts as marketing consultant and sells the newsletter services to individual legislators. Donald K. Brown is president of Advocation, Inc., and Les H. Cohen has been retained by Advocation, Inc., as Brown's assistant. The service provided by Advocation, Inc. is the sales effort, which when successful is followed by technical services provided by Rohrdata Systems for production and mailing. Prices for all materials and functions are established in accordance with a price list from the Senate and the Assembly. Rules have been adopted by both the Assembly and the Senate governing the use of their respective mailing programs.

The question presented to the Commission is whether, by reason of the above facts, Donald K. Brown and Les H. Cohen (acting as Advocation, Inc.) must register as lobbyists for the Corporation.

CONCLUSION

Messrs. Brown and Cohen are not required to register as lobbyists under Government Code Section 82039 by reason of their activities for Advocation, Inc., because their activities do not influence legislative or administrative action, as defined in Section 82037.

ANALYSIS

In order to be a lobbyist under the Political Reform Act of 1974, one must be employed or retained for the purpose of influencing legislation or administrative action. See Government Code Section 82039.^{1/} Since the described activities of Messrs. Brown and Cohen are before the Legislature and not before any administrative agencies, the only issue raised is whether their activities constitute an attempt to influence "legislative action."

There can be no doubt but that they are attempting to influence the actions of individual legislators. Under the newsletter program of the Legislature, each member is permitted to select, from an approved contract list, the company or companies he wishes to perform the production and mailing functions. The price is set by the Legislature. Any contractor is entitled to be placed on the approved list if it can meet the price and time limit qualifications established by the Legislature. See, e.g., Memorandum from Senate Subcommittee on Communications to Members of the Senate, August 1974 at p.8. There are 35 contractors on the list including Rohrdata Systems which, as indicated, is represented by Advocation, Inc. and Messrs. Brown and Cohen.

Although it is evident that Messrs. Brown and Cohen are attempting to persuade individual legislators to choose the technical services of Rohrdata Systems, it does not follow that they are necessarily attempting to influence "legislative action." That term is defined in Government Code Section 82037 in pertinent part as follows:

... the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature ... or by a member ... of the Legislature acting in his official capacity.

(Emphasis added.)

Although we may assume that a member of the Legislature acts in his "official capacity" when he selects a contractor for the mailing of his legislative newsletters, such a matter is certainly not a "bill, resolution, amendment, report [or] nomination." Accordingly, a legislator who selects a mailing contractor does not perform a "legislative action"

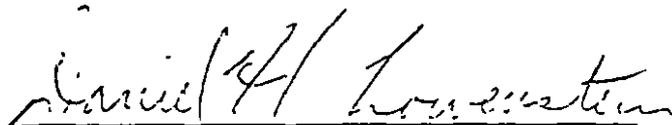
^{1/}
All statutory references are to the Government Code unless otherwise noted.

unless the selection is an "other matter" covered by Section 82037. We do not believe the phrase "other matter" can reasonably be stretched to cover such a transaction.

The phrase "other matter" is included in Section 82037 to assure that genuine legislative activity will be covered even if in form and in title it does not fall into one of the categories enumerated in the section. Whereas legislative matters can be drafted, introduced, considered, modified, enacted and defeated, none of these verbs which appear in Section 82037 is applicable to the selection of a mailing contractor. A contrary conclusion would make lobbyists of furniture salesmen, office suppliers and others who deal with the Legislature in a solely commercial capacity.

Accordingly, we conclude that the activities described do not constitute attempts to influence legislative or administrative action and therefore the activities do not require Messrs. Brown and Cohen to register as lobbyists.^{2/}

Approved by the Commission on May 1, 1975. Concurring: Brosnahan, Lowenstein, Miller and Waters. Commissioner Carpenter was absent.


Daniel H. Lowenstein
Chairman

^{2/}
We note that Mr. Brown has registered as a lobbyist by reason of activities other than those described in this opinion request. Our opinion does not address the question of whether Mr. Brown's transactions with legislators in behalf of Advocation, Inc. are reportable "exchanges" under Government Code Section 86109, and we intimate no views on this question.