

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by)	No. 75-003
George G. Hardie, President)	October 23, 1975
Golden State Greyhound Association)	

BY THE COMMISSION: We have been asked the following question by George G. Hardie, President of the Golden State Greyhound Association:

As President of the Golden State Greyhound Association (hereinafter the "Association"), Mr. Hardie attempts to influence the passage of legislation legalizing pari-mutuel greyhound racing in California. The Association is a non-profit association with seven regional offices and approximately 2,000 members. Individual members pay no dues. The three corporate members, Los Angeles Kennel Club, Inc., Los Angeles Greyhound Racing Club, Inc. and San Jose Kennel Club, pay membership dues of approximately \$1,000 per month. Mr. Hardie is an officer and stockholder in the Los Angeles and San Jose Kennel Clubs, and he formed the Los Angeles Greyhound Racing Club, although he does not actively participate in that club at the present time.

If legislation legalizing pari-mutuel betting on greyhound racing is enacted, the Association will not seek a franchise or a license. However, the three corporate members of the Association may seek greyhound racing licenses.

Mr. Hardie receives no salary or economic consideration from the Association or from any of the member corporations. In 1975, he has received \$385.78 from the Association as reimbursement for Association expenses he paid from his personal funds. Of this amount, \$110.27 was reimbursement for food and travel. He has never been paid, nor promised, any consideration in connection with any activity related to influencing legislative or administrative action. In addition, he has never received any promotional stock, stock options, or any other kind of contingent benefit or expectancy from any of the subject corporations.^{1/}

^{1/} Letter from James Wilcox, attorney for George G. Hardie, to Robert M. Stern, General Counsel, Fair Political Practices Commission, July 29, 1975.

Is Mr. Hardie a lobbyist within the meaning of the Political Reform Act?

CONCLUSION

On the basis of the limited facts before us, Mr. Hardie is not a lobbyist within the meaning of Government Code Section 82039 because he has not received or contracted for economic consideration relative to his lobbying activities.

ANALYSIS

The Political Reform Act places certain reporting requirements and restrictions on lobbyists. Government Code Sections 86100, et seq.^{2/} The term "lobbyist" is defined in Section 82039 and has been further amplified by regulation.^{3/} 2 Cal. Admin. Code Section 18239. It is undisputed that Mr. Hardie's efforts to secure passage of favorable legislation constitute "influencing legislative or administrative action," as used in Section 82039, and defined in Section 82032. See also 2 Cal. Admin. Code Section 18239(d). However, Mr. Hardie carries on his activities as a volunteer and pays his own expenses. He has not received, and does not contemplate receiving, compensation for his efforts, other than certain reimbursement for travel expenses.

^{2/} All statutory references are to the Government Code unless otherwise noted.

^{3/} Section 82039 provides:

"Lobbyist" means any person who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action. No person is a lobbyist by reason of activities described in Section 86300.

Section 82039 contains two references to the receipt of consideration by the lobbyist:

Lobbyist means any person who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses ... if a substantial or regular portion of the activities for which he receives consideration is for the purpose of influencing legislative or administrative action.

(Emphasis added).

Arguably, the reference to "employed or contracts for economic consideration," if it stood alone, might include one such as Mr. Hardie who is employed but does not receive a salary. He represents and acts on behalf of the Greyhound Association, and can reasonably be said to be "employed" by that Association. However, the second reference to consideration ("for which he receives consideration") makes it clear that a person must not only be employed but also must receive economic consideration to come within the definition of "lobbyist."

1. Reimbursement for Travel Expenses.

Mr. Hardie has received reimbursement from the Golden State Greyhound Association for certain travel expenses. However, reimbursement for reasonable travel expenses, without more, does not bring a person within the definition of a lobbyist as set forth in Section 82039. Moreover, regulations interpreting the meaning of "reasonable travel expenses" provide that the phrase means "transportation expense plus a reasonable sum for food and lodging." 2 Cal. Admin. Code Section 18239(a).

If Mr. Hardie's reimbursement exceeded an amount attributable to reasonable travel expenses, we could find that he was a recipient of economic consideration as contemplated by Section 82039. However, in 1975, Mr. Hardie has received reimbursement for food and lodging amounting to \$110.27. We have been provided with no information indicating that this limited reimbursement received by Mr. Hardie constitutes consideration for influencing legislative and administrative action.

2. Payments from Member Corporations.

Mr. Hardie seeks to influence legislative or administrative action on behalf of the Golden State Greyhound Association. By

doing so, his activities benefit the members of the Association. If the record contained any evidence that Mr. Hardie received economic consideration from any of the Association members as a payment for his lobbying activities, he would be a lobbyist as defined in Section 82039. However, Mr. Hardie has stated that he does not receive any consideration from the members of the Association.

3. Expectation of Future Benefits.

In some cases, the expectation of future benefits from activities in conjunction with influencing legislative or administrative action may be sufficient to constitute economic consideration within the meaning of Section 82039. However, Mr. Hardie will not receive economic benefit from the Golden State Greyhound Association if favorable legislation is passed. Moreover, he has stated that he has never received any promotional stock, stock options or any other kind of contingent benefit or expectancy from any members of the Association. He also has stated that he has never been promised consideration or reimbursement for his activities relating to influencing legislative or administrative action.

It is clear from the preceding discussion that if Mr. Hardie's reimbursements are limited to reasonable travel expenses and he has not received, and will not receive, any consideration for his activities, he is not a lobbyist within the meaning of Section 82039.

In this opinion, we do not reach the issue of Mr. Hardie's responsibilities under Section 86108(b). Under that section, any person who makes payments to influence legislative or administrative action totaling \$250 or more in any month must file periodic reports conforming with the requirements of Section 86109. The types of payments which constitute payments to influence legislative or administrative action are enumerated in Section 82045.^{4/} (See also 2 Cal. Admin. Code Section 18621.)

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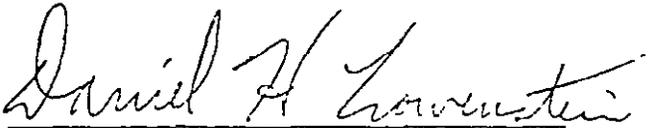
82045. "Payment to influence legislative or administrative action" means any of the following types of payment:

- (a) Direct or indirect payment to a lobbyist whether for salary, fee, compensation for expenses, or any other purpose, by a person employing or contracting for the services of the lobbyist separately or jointly with other persons;
- (b) Payment in support or assistance of a lobbyist or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(Cont'd. next page)

If Mr. Hardie makes such payments and they total \$250 or more per month, he must file the periodic statements required by Section 86108(b), unless all of the payments are of the type described in Section 82045(c).

Approved by the Commission on October 23, 1975.
Concurring: Brosnahan, Lowenstein and Miller. Commissioners Carpenter and Waters were absent.


Daniel H. Lowenstein
Chairman

4/ (Cont'd.)

(c) Payment which directly or indirectly benefits any elective state official, legislative official or agency official or a member of the immediate family of any such official;

(d) Payment, including compensation, payment or reimbursement for the services, time or expenses of an employee, for or in connection with direct communication with any elective state official, legislative official or agency official;

(e) Payment for or in connection with soliciting or urging other persons to enter into direct communication with any elective state official, legislative official or agency official.

