

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: )  
 )  
 Opinion requested by: )  
 Gary Kovall, )  
 Los Angeles County )  
 Bar Association )

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No. 78-012  
 Dec. 5, 1978

BY THE COMMISSION: The Los Angeles County Bar Association has asked the following questions:

1. Are expenses incurred by the Los Angeles County Bar Association in connection with direct communication with elective state or legislative officials concerning the drafting of legislation and its subsequent introduction in the Legislature reportable as "payments to influence legislative action"?

2. Are payments of salary and employer reimbursements to an employee for food, lodging and travel expenses incurred in the course of the employee's lobbying effort on behalf of the Los Angeles County Bar Association's Barristers' Committee on Legislation reportable by the employer as "payments to influence legislative action"?

CONCLUSION

1. Expenses incurred by the Los Angeles County Bar Association in connection with drafting legislation and its subsequent introduction in the Legislature are reportable as payments to influence legislative action once there is direct communication with elective state or legislative officials concerning the legislation.

2. The payment or reimbursement by an employer to an employee who incurs expenses in connection with Barrister Committee activities is not a payment to influence legislative action on the part of the employer. The employer will not incur a reporting obligation if the employee's attempts to influence legislative action are not related to the work of the employer or if the employer has a uniform policy allowing employees to engage in outside activities during normal working hours.

FACTS

The Los Angeles County Bar Association ("Association") is a nonprofit membership association for attorneys residing or practicing law in Los Angeles. The Barristers' Section of the Association formed the Barristers' Committee on Legislation ("Committee") more than one year ago. The Committee was formed primarily to monitor and respond to legislative developments in California of interest to the Association and its membership. The Committee also drafts and procures introduction of legislative proposals it initiates.

Neither the Association nor the Committee employs or contracts for the services of a lobbyist under Government Code Section 82039.<sup>1/</sup> The Association may incur and pay expenses for activities of Committee members. Some of the Committee members may engage in legislative activity on behalf of the Committee during normal working hours and be paid by their regular employer. Likewise, some of the Committee members may receive reimbursement from their employers for travel, food and lodging expenses incurred for Committee legislative activities.

ANALYSIS

1. Section 86108(b) requires persons who make payments of \$250 or more in a calendar month to report their influencing activity and expenses if the payments are made to influence legislative or administrative action. Section 82045 specifies the types of payments that are made to influence legislative or administrative action and that, therefore, are reportable pursuant to Section 86108(b). One of the types of payments is:

(d) Payment ... for or in connection with direct communication with any elective state official, legislative official or agency official.

Section 82045(d).

Under Section 82045(d), if legislative action is being influenced through direct communication with an elective state

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<sup>1/</sup> All statutory references are to the Government Code unless otherwise noted.

or legislative official, payments will be reportable under Section 82045(d). "Legislative action" is defined as:

...the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or other matter by the Legislature or by either house or any committee, subcommittee, joint or select committee thereof, or by a member or employee of the Legislature acting in his official capacity....

Section 82037.

"Influencing legislative action" includes:

...promoting, supporting, influencing, modifying, opposing or delaying any legislative ... action....

Section 82032.

Thus, the costs incurred for direct communication with an elective state or legislative official in which Committee members promote or support a proposal for future legislation or the drafting or introduction of a specific bill will be reportable as payments to influence legislative action under Section 82045(d).<sup>2/</sup> Such payments are reportable whether or not the bill or proposal is ever introduced. As Sections 82032 and 82037 make clear, the Act does not limit reporting of costs in connection with influencing activity to those costs incurred to influence the enactment or defeat of a pending bill.

However, the requirement of Section 82045(d) that the payment be "for or in connection with" a contact with a legislative official in order to be reportable leads us to conclude that expenses incurred for internal discussions among Committee members concerning possible legislation are not reportable as payments to influence legislative activity when those expenses are incurred prior to any contact with

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<sup>2/</sup> We are not addressing the question of what kind of communication, beyond the discussion of legislative proposals, with a legislative official will trigger a reporting requirement.

legislative officials concerning the legislation.<sup>3/</sup> This conclusion permits the Committee and other groups to discuss freely the merits of possible legislation without the need to disclose their activity or expenses, yet requires disclosure once a lobbying effort with respect to particular legislation is undertaken.

2. Some of the Committee members may incur expenses for food, lodging and travel in connection with the Committee's lobbying efforts. The Association may pay reimbursement for those expenses. Those reimbursements will be reportable by the Association as payments to influence. Section 82045(d).

However, it is also possible that some of the members' expenses for travel, food and lodging will be paid for by the members' employers. It is also expected that some employers will allow their Committee member employees to perform Committee activities during regular working hours. The Association has asked if the employers will be required

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<sup>3/</sup> There are circumstances under which an organization can incur a reporting obligation prior to direct contact with legislative officials. Section 82045(e) requires reporting of expenses incurred to solicit or urge others to enter into direct communication with legislative officials. Therefore, if an organization decides to support a particular bill and, instead of communicating its support directly to legislators, incurs expenses to urge others to communicate with the legislators, the organization may have a reporting obligation under Section 82045(e) despite the lack of direct communication. The Association does have a newsletter in which it may urge its members to communicate directly with legislative officials concerning specific legislation. However, under the Commission's regulation effective on January 1, 1979 (2 Cal. Adm. Code Section 18620(e)(2)), costs regularly incurred for publishing a regular newsletter are not reportable even if the newsletter urges others to communicate directly. The exclusion only applies to regular costs. If the newsletter is issued on a more frequent basis or expanded in size in order to urge others to contact legislative officials, then the additional costs would be reportable as payments to influence legislative action under Section 82045(e).

to report the reimbursements or salary costs<sup>4/</sup> to its employees as payments to influence legislative activity if the employee is performing legislative activity and communicating on behalf of the Association, and not on behalf of the employer.

Section 82045(d), in defining what payments are reportable as payments to influence legislative or administrative action, includes:

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.

(Emphasis added.)

We must decide whether the employer must report payments to his employee when the employee is not communicating with legislative officials on behalf of his employer. We previously examined this issue in the Opinion requested by John C. Morrissey, 2 FPPC Opinions 84, 89 (No. 75-099, July 6, 1976) and held that, under the facts presented, such payments were not reportable.<sup>5/</sup>

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<sup>4/</sup> The salary of an employee who spends less than 10% of his or her compensated time in a month influencing legislative or administrative activity is not reportable. 2 Cal. Adm. Code Section 18621(a)(3). Likewise, under the regulation effective January 1, 1979, the payment of such salary is not reportable. 2 Cal. Adm. Code Section 18620(d)(1)).

<sup>5/</sup> That conclusion is supported in the regulation, 2 Cal. Adm. Code Section 18620, effective January 1, 1979, governing reporting pursuant to Section 86108(b). Payments to influence legislative activity, such as those under Section 82045(d), are reportable if the payment "would not have been incurred but for the filer's activities to influence or attempt to influence legislative action..." 2 Cal. Adm. Code Section 18620(d)(2)(C). (Emphasis added.)

The situation we considered in the Morrissey Opinion involved a Pacific Gas and Electric Company employee who served on an advisory committee to the San Francisco Bay Conservation and Development Commission. The employee was invited to serve because of his expertise as a planner and because his employer owned large amounts of land within the Bay Conservation and Development Commission's jurisdiction. The employer allowed the employee to attend committee meetings and to engage in related activities during normal working hours. The employee, in connection with committee activity, was in direct communication with an agency official.

We think that an employer's payments of salary and reimbursement of expenses should not be reportable by the employer if either the influencing of legislative activity is unrelated to the work of the employer or the employer has a uniform policy allowing employees to engage in outside activities during normal working hours.<sup>6/</sup> If the lobbying activity is unrelated to the work of the employer or is performed pursuant to a uniform policy allowing outside activity, one cannot conclude that the employer is paying the salary to influence legislative or administrative action. Therefore, the employer should not be required to disclose such payments.

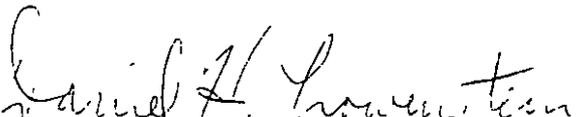
Requiring employers to disclose payments that are unrelated to the employer or pursuant to a uniform policy would not present a true representation of the legislative activity that the employer was attempting to influence. Such a requirement would also tend to discourage employers from offering their employees an opportunity to spend part of their compensated time in pro bono publico activities.

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<sup>6/</sup> In the Morrissey Opinion, the standard we used did not require the employer to report the employee's activity if the activity was not on behalf of or solely to represent the interests of the employer. We recognize the standard used here is more stringent than that imposed on the employer in the Morrissey Opinion. However, that opinion dealt with an employee whose influencing activity occurred because of his service on the advisory committee to a public agency. The less stringent standard was appropriate in that opinion to encourage people to serve on boards or public bodies.

The Committee members serve voluntarily because of their interest in legislation and the legislative proposals being supported or opposed by the Committee. The members are not selected in whole or in part on the basis of by whom they are employed. The employers do not pay their employees to influence legislative action and they may reimburse the employees for Committee-incurred expenses without regard to the specific activity performed. Most of the employers have a uniform policy encouraging outside activity for their employees. Accordingly, while we cannot conclude generally that employers of Committee members will never have to report their employees' activity in connection with Committee work, we think it is likely that in most cases the employers of Committee members will not have to report reimbursement of employees' expenses and salary payments as payments to influence legislative or administrative action.

Approved by the Commission on December 5, 1978.  
Concurring: Commissioners Lapan, Lowenstein, McAndrews,  
Remcho and Quinn.

  
Daniel H. Lowenstein  
Daniel H. Lowenstein  
Chairman