

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by:)	No. 75-172
Robert W. Naylor)	June 1, 1976
Attorney Representing)	
Standard Oil of California)	
)	

BY THE COMMISSION: We have been asked the following question by Robert W. Naylor, representing Standard Oil of California:

Mr. R. D. Bonner is employed as a staff engineer specializing in pressure vessels in the Engineering Department of the Standard Oil Company of California ("Standard"). Mr. Bonner is also a member of the American Society of Mechanical Engineers ("ASME") Boiler and Pressure Vessel Committee ("Committee"), the purpose of which is to formulate construction codes and associated rules covering care, operation and in-service inspection for boilers, pressure vessels and nuclear components. As a member of this committee, Mr. Bonner actively participates in the discussion, formulation and adoption of changes in the ASME Boiler and Pressure Vessel Code. Part of Mr. Bonner's ASME activities are undertaken on company time as one of his functions as an employee and all of his related expenses are reimbursed by Standard.

Every two months, the Committee holds a three to five day meeting in New York City, although one meeting per year is held elsewhere. The Committee has twenty-five members drawn from all parts of the country, four of whom are from California. In addition, the Committee receives input from a number of subcommittees.

In the course of considering changes and modifications to the ASME Code, Mr. Bonner comes into frequent contact with Mr. M. S. Perlee, Principal Safety Engineer, Pressure Vessels, Division of Industrial Safety, in the California Department of Industrial Relations. Mr. Perlee is a member of the Conference Committee of the ASME Boiler and Pressure Vessel Committee. Conversations between Mr. Perlee and Mr. Bonner are principally concerned with the ASME Boiler and Pressure Vessel Code.

The ASME Code has been adopted as the standard for boiler and pressure vessel safety throughout most of the United

No. 75-172
Page Two

States, and changes in the Code therefore affect the regulations and standards to be applied not only in California but also in many other jurisdictions across the country. In California, the ASME Boiler and Pressure Vessel Code has been adopted and incorporated by reference in Title 8 of the California Administrative Code, Section 753(c-3) and Sections 754, et seq. The Administrative Code must be formally amended from time to time to include the latest version of the ASME Code, and Mr. Bonner does not attempt to influence the adoption of such amendments. It is Mr. Bonner's understanding, however, that the California Division of Industrial Safety, under its authority to approve boilers and pressure vessels of "equivalent safety," ordinarily accepts and applies the latest ASME Code during the period between the Code's adoption and the formal updating of the Administrative Code. In relatively infrequent cases, the Division issues special orders declining to accept some ASME Code changes.

To date Mr. Bonner's compensated Code-related activities have not involved as much as 10 hours of "direct communication" with California agency officials in two consecutive calendar months and Mr. Bonner therefore is not a lobbyist under 2 Cal. Adm. Code Section 18239(e). However, during some months Mr. Bonner's total compensated Code-related activities do amount to more than ten per cent of his compensated time, thus raising a question of reportability under 2 Cal. Adm. Code Section 18621.

Based on this information Mr. Naylor has asked:

Is Standard required to report a portion of Mr. Bonner's salary and reimbursed expenses as a payment to influence legislative and administrative action? Government Code Sections 86109(c), 82045(d).

CONCLUSION

Mr. Bonner's activities as a member of the ASME Boiler and Pressure Vessel Committee do not constitute "direct communication with agency officials for the purpose of influencing administrative action." 2 Cal. Adm. Code Section 18621(a)(3). Consequently, salary payments to him are not reportable as "payments to influence legislative or administrative action." Government Code Section 82045(d).

ANALYSIS

As an employer of lobbyists, Standard Oil files periodic statements including information regarding payments

No. 75-172
Page Three

made by the company to influence legislative and administrative action. Government Code Section 86109(c).^{1/} The term "payment to influence legislative or administrative action" includes any "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." Section 82045(d). Regulations implementing this statutory provision require the lobbyist employer to report salary paid to an employee for that portion of his time devoted to direct communication with elective state officials, legislative officials or agency officials if the purpose of the communication is to influence legislative or administrative action. However, the employer is not required to report wages of any employee who spends less than 10% of his compensated time during any one month in direct communication or developing material used in direct communication. 2 Cal. Adm. Code Section 18621(a)(3).

Standard has indicated that, during some months, Mr. Bonner's code related activities amounted to more than 10% of his compensated time. Because the de minimis standard has been exceeded, Standard's salary payments to R. D. Bonner will be reportable if Mr. Bonner's activities as a member of the ASME Boiler and Pressure Vessel Committee constitute direct communication with agency officials and that communication is carried on for the purpose of influencing administrative action.

In the course of participating on the Committee, Mr. Bonner communicates with Mr. M. S. Perlee. Mr. Perlee, as Principal Safety Engineer of the Pressure Vessels Division, Industrial Safety of the Department of Industrial Relations, is an agency official, as that term is defined in Section 82004.^{2/} He participates in the formulation of regulations pertaining to pressure vessels, testifies before the Industrial Relations Board at hearings on proposed regulations and is responsible for enforcing the regulations once adopted.

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

^{2/} Section 82004 states:
"Agency official" means any member, officer, employee or consultant of any state agency who as part of his official responsibilities participates in any administrative action in other than a purely clerical, secretarial or ministerial capacity.

Although Mr. Perlee is an agency official, for the reasons stated below we conclude that Mr. Bonner does not participate on the ASME Boiler and Pressure Vessel Committee for the purpose of influencing administrative action.^{3/} Consequently, Standard Oil is not required to report any portion of his salary as a payment to influence legislative or administrative action.

The term "administrative action" is defined in Section 82002 to mean:

the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding, which shall include any proceeding governed by Chapter 4.5 of Division 3 of Title 2 of the Government Code (beginning with Section 11371).

Mr. Bonner's activities as a member of the Committee are not directly concerned with the proposal, drafting, development, consideration, amendment, enactment or defeat of any rule or regulation of the Division of Industrial Safety. Rather, he serves on a committee that updates national standards, and that committee is not under contract to or supervised by the Department of Industrial Relations. Accordingly, its activities do not involve the kind of actions contemplated by the definition of administrative action contained in Section 82002.

The fact that the ASME Boiler and Pressure Vessel Code is incorporated by reference into 8 Cal. Adm. Code Section 753(c-3) and 754, does not change our conclusion. If the Committee developed standards applicable only to California, we might reach a different conclusion. However, in light of the Committee's national focus and the fact that Mr. Bonner's role in developing the standards is so remote from their adoption and implementation in California, we do not think that the purposes of the Act would be served by including the Committee's activities within the purview of administrative action. Mr. Bonner's

^{3/} It should be reiterated that this opinion concerns only Mr. Bonner's participation on the ASME Boiler and Pressure Vessel Committee. We do not address any reporting requirements that may attend Mr. Bonner's other activities.

activities are directed toward developing national standards, rather than influencing the Division of Industrial Safety, and it is in this context that he communicates with Mr. Perlee, an agency official. We decline to expand the term "administrative action" to include activities that are so far removed from a California agency's activities.^{4/}

In conclusion, Mr. Bonner's activities as a member of the ASME Boiler and Pressure Vessel Committee do not constitute influencing legislative or administrative action. Thus, salary payments to him for the portion of his time spent on such activities are not reportable as payments to influence legislative or administrative action.

Approved by the Commission on June 1, 1976. Concurring: Brosnahan, Carpenter, Lapan, Lowenstein and Quinn.



Daniel H. Lowenstein
Chairman

^{4/} Of course, adoption of the Boiler and Pressure Vessel Code amendments by the Division is administrative action. However, we are told that Mr. Bonner does not attempt to influence the adoption of the amendments.