

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	
Opinion requested by)	
Edwin F. Sloan, Executive Vice)	No. 75-169
President,)	July 6, 1976
California Hotel and Motel)	
Association)	
)	

BY THE COMMISSION: We have been asked the following questions by Edwin F. Sloan, Executive Vice President of the California Hotel and Motel Association:

(1) Is the Fire Safety Coalition of California (hereinafter referred to as the "Coalition") an industry, trade, or professional association which must report the names of its members if they number no more than 50? Government Code Section 86109(b)(3).

(2) Are payments to the Coalition includable for the purpose of determining whether an organization has made payments to influence legislative or administrative action of two hundred fifty dollars (\$250) or more in any month and, therefore, must file reports pursuant to Section 86108(b)?

(3) If an organization already files reports as either a lobbyist employer, Government Code Section 86108(a), or a person who makes payments to influence legislative or administrative action of \$250 or more in value in any month, Government Code Section 86108(b), must the organization report payments to the Coalition?

CONCLUSION

(1) The Fire Safety Coalition of California is not an industry, trade, or professional association within the meaning of Government Code Section 86109(b)(3), but rather a group of organizations with a common economic interest within the meaning of Government Code Section 86109(b)(4). Accordingly, the Fire Safety Coalition of California is not required to list the names of its members on reports filed pursuant to Government Code Section 86108.

(2) Dues or similar payments for membership in a bona fide association, some portion of which are used to influence administrative or legislative action, need not be included in determining whether a person must file reports pursuant to Government Code Section 86108(b). 2 Cal. Adm. Code Section 18610(b). However, in the instant case, payments to the Coalition are not "dues or similar payments for membership in a bona fide association." Consequently, the appropriate portion of these payments must be counted in determining whether the Coalition member is required to comply with Government Code Section 86108(b).

(3) An organization that already files reports pursuant to Government Code Section 86108 must report the pro rata share of payments that the Coalition utilizes to influence legislative or administrative action if that pro rata share is \$25 or more.

ANALYSIS

The California Hotel and Motel Association (hereinafter referred to as the "Association") employs a lobbyist and, therefore, files reports as prescribed in Government Code Section 86109.^{1/} In addition, the Association has joined with other interested parties to form the Fire Safety Coalition of California for the purpose of opposing the State Fire Marshal's regulations concerning existing highrise buildings. The Coalition will make payments to influence legislative and administrative action in excess of \$250 per month and thus intends to file reports pursuant to Section 86108(b). The Coalition has informed the Commission staff that it does not intend to employ a lobbyist.

The Coalition's program to influence legislative and administrative action will be financed by voluntary payments by some of its members. Once the issues concerning the fire regulations are resolved, the Coalition intends to disband.

(1) Section 86109(b) requires a person filing reports pursuant to Section 86108(b) to provide information sufficient to identify the nature and interests of the filer. However, Section 86109(b) distinguishes between different types of filers with respect to disclosure of this information. For example, in the case of an industry, trade or professional association, the filer must provide a description of:

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

... the industry, trade or profession which it represents including a specific description of any portion or faction of the industry, trade or profession which the association exclusively or primarily represents and, if the association has no more than fifty members, the names of the members

Section 86109(b)(3)

On the other hand, if the filer is not an industry, trade or professional association, or an individual or a business entity,^{2/} it must provide a statement of:

... the person's nature and purposes, including a description of any industry, trade, profession or other group with a common economic interest which the person principally represents or from which its membership or financial support is principally derived.

Section 86109(b)(4)

Initially, we must consider whether the Coalition is an industry, trade or professional association and, therefore, must disclose the information required by Section 86109(b)(3). We conclude that the Coalition is not an industry, trade or profession. The Coalition is composed of hotel and motel interests, apartment owners, commercial landlords, and others occupying highrise buildings who are concerned with the Fire Marshal's regulations. These groups do not represent a particular industry such as chemicals, manufacturing, or automobiles; a particular trade such as the building trade or the shipping trade; or a particular profession such as lawyers, doctors, or accountants. Instead, they represent members of different industries, trades and professions who have a common interest in the fire regulations applicable to highrise buildings.

Although members of the Coalition represent a variety of industries, trades and professions, they share a common economic interest. That interest will be affected by the fire regulations, and they have formed the Coalition to protect their common economic interest. Subsection (b)(4) specifies the appropriate reporting requirements for organizations such as the Coalition that are not industry, trade or professional associations but which, nevertheless, possess a common economic interest. Accordingly, the Coalition need not comply with subsection (b)(3) and list its members, but it must describe

^{2/} Subsections (1) and (2) of Section 86109(b) refer to individuals and business entities, respectively. We are not here concerned with an individual or a business entity and, therefore, limit our consideration to subsections (3) and (4).

its nature (for example, "members of the hotel/motel industry, apartment owners, and large commercial landlords") and must specify its purpose (for example, "opposing the State Fire Marshal's regulations for highrise buildings").

(2) Mr. Sloan has asked whether a member organization's payments to the Coalition must be included in determining whether the organization is required to file reports pursuant to Section 86108(b). If the payments to the Coalition are membership dues or similar payments to a bona fide association, the payments need not be included in determining whether payments of \$250 or more have been made to influence legislative or administrative action.

Dues or similar payments made by any person for membership in a bona fide association, including any federation, confederation or trade, labor or membership organization, some portion of which is used to influence legislative or administrative action, need not be included for the purpose of determining whether a person must file reports pursuant to Gov. Code Section 86108(b).

2 Cal. Adm. Code Section 18618(b).
(Emphasis added.)

However, the facts in the instant case raise two questions: first, is the Coalition a "bona fide association;" second, are the payments "dues or similar payments for membership?" We conclude that both questions must be answered in the negative.

The Coalition was formed for the exclusive purpose of opposing regulations proposed by the State Fire Marshal, and it intends to disband as soon as the dispute over the fire regulations is resolved. We think that the term "bona fide association" means that an organization is ongoing in nature, and does not include a short term coalition that is formed to support or oppose a single group of regulations.^{3/}

Even if we determined that the Coalition were a "bona fide association," the payments would be reportable unless they were "dues or similar payments for membership." In the instant case, some members of the Coalition contribute funds to support the Coalition's activity and some do not. Moreover, those which make payments do so voluntarily, free from any agreement

^{3/} The conclusion that the Coalition is not a "bona fide association" within the meaning of 2 Cal. Adm. Code Section 18618 in no way suggests that the Coalition is improper or unlawful.

or fee schedule. Thus, there are no dues or similar payments "for membership;" rather, membership is extended regardless of whether one has contributed financial assistance to the lobbying campaign.

We conclude, therefore, that payments to the Coalition are not dues or similar payments to a bona fide association as required by 2 Cal. Adm. Code Section 18618(b). Consequently, payments to the Coalition are "payments to influence legislative or administrative action" to the extent that the Coalition uses such funds to support its lobbying activity. Each member's pro rata share of payments which the Coalition uses for the purposes described in Section 82045 and 2 Cal. Adm. Code Section 18621 should be included in determining whether the member must file reports pursuant to Section 86108(b).^{4/}

(3) Lastly, we have been asked whether an organization which already files reports pursuant to either Section 86108(a) or Section 86108(b) must report payments to the Coalition.^{5/} Section 86109(c) requires that such reports include all "payments to influence legislative and administrative action" of \$25 or more in value. Accordingly, a member organization must report the pro rata share of its payments which the Coalition uses to oppose the fire regulations as "payments to influence legislative and administrative action" if such pro rata share is \$25 or more.

Approved by the Commission on July 6, 1976. Concurring:
Brosnahan, Carpenter, Lapan, Lowenstein and Quinn.


Daniel H. Lowenstein
Chairman

^{4/} In addition, we were asked how the Coalition should report payments to law firms and public relations firms. Mr. Sloan informed the Commission staff that none of these firms are themselves lobbyists since they are not directly communicating or publicly testifying for the purpose of influencing legislative or administrative action. Since the Coalition is not the employer of a lobbyist, only those payments to the firms which are made in connection with directly communicating or soliciting or urging others to directly communicate with public officials for the purpose of influencing legislative or administrative action need be reported. Payments to the law firm in connection with contemplated court action need not be reported.

^{5/} The California Hotel and Motel Association, for example, employs a lobbyist and files reports pursuant to Section 86108(a).