

## BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: )  
 )  
 Opinion requested by ) No. 75-037  
 L.T. Wallace, Director of ) September 4, 1975  
 the Department of Food and )  
 Agriculture for the State )  
 of California )  
 \_\_\_\_\_ )

BY THE COMMISSION: We have been asked the following question by L.T. Wallace, Director of the Department of Food and Agriculture for the State of California:

Are payments that the Del Monte Corporation makes to George T. Okumura, an employee of the Department of Food and Agriculture, as compensation for research conducted on the employee's personal time and not directly related to his work for the agency, reportable by Del Monte Corporation under Government Code Section 86109?<sup>1/</sup>

George T. Okumura is employed by the State of California as Chief of Laboratory Services, Division of Plant Industry, for the Department of Food and Agriculture. His responsibilities involve coordination of the five laboratory sub-units and the operations center. He is responsible for assuring that specimens are diagnosed and evaluated correctly. In addition, he handles a number of administrative tasks, including processing complaints, planning technical training for the staff, evaluating staff and preparing the laboratory budget.<sup>2/</sup>

The Del Monte Corporation (hereinafter "Del Monte") is a corporation involved in the processing and distributing of food products, institutional services and trucking services. Del

---

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

<sup>2/</sup>  
 Letter from George T. Okumura, Chief, Laboratory Services, Division of Plant Industry, Department of Food and Agriculture, to Daniel Lowenstein, Chairman, Fair Political Practices Commission, August 22, 1975.

Monte employs a lobbyist who is registered to lobby the Department of Food and Agriculture. Mr. Okumura is retained on a part-time basis by Del Monte for nine months of every year. He receives compensation of \$525 per month to perform basic research concerning population and sexual characteristics of certain moths. He performs this research at home, using his own equipment. The moths are sent directly to his home by Del Monte and the findings are reported to a representative of Del Monte. Del Monte uses this information in its pest control programs

#### CONCLUSION

Mr. Okumura is not an agency official, as that term is defined in Section 82004, because he does not participate in any administrative action. Section 82002. Consequently, the payments do not have to be reported by Del Monte.

#### ANALYSIS

At the outset, we note that this opinion request should have been submitted by Del Monte. Section 83114 provides that "any person may request the Commission to issue an opinion with respect to his duties under this title ...." The question posed by this opinion request involves the duties of Del Monte under the Political Reform Act, not those of the Department of Food and Agriculture. However, this opinion request was granted before the Commission adopted regulations clarifying the statutory provision, and, having done so, we will respond to the issue raised by this request. See 2 Cal. Admin. Code Section 18320.

Sections 86108(a) and 86109 require every employer of a lobbyist to file periodic reports containing specified information, including "the name and official position of each ... agency official ... with whom the filer has engaged in an exchange of money, goods, services or anything of value and the nature and date of each such exchange and the monetary values exchanged, if the fair market value of either side of the exchange exceeded one thousand dollars (\$1,000)." Section 86109(d) (Emphasis added).

Employers of lobbyists also must disclose the total amount of payments to influence legislative and administrative action, and the name and address of each person to whom

such payments aggregating more than \$25 have been made.  
Section 86109(c).<sup>3/</sup>

The phrase, "payment to influence legislative or administrative action" is defined in Section 82045, which enumerates five types of payments as payments to influence legislative or administrative action. Subsection 82045(c) states that payment to influence a legislative or administrative action means any payment "which directly or indirectly benefits any ... agency official or member of the immediate family of any such official." (Emphasis added).

For the reasons stated below, we conclude that Mr. Okumura is not an "agency official" within the meaning of the Political Reform Act. Therefore, Del Monte is not required to report the salary payments made to him.

The term, "agency official" is defined in Section 82004 to mean:

... 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.

Mr. Okumura is Chief of Laboratory Services for the Department of Food and Agriculture. His responsibilities involve coordination of the five laboratory sub-units and the operations center, and assuring that the laboratories properly process and evaluate specimens. He has a variety of other administrative responsibilities, including personnel supervision and budget preparation. However, Mr. Okumura's responsibilities do not include participation in any administrative action, as

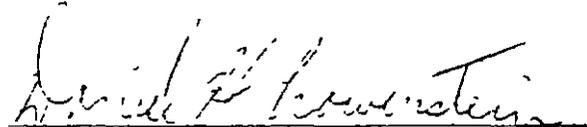
---

<sup>3/</sup>Section 86109(c) provides in its entirety that periodic reports shall contain:

The total amount of payments to influence legislative or administrative action during the period, and the name and address of each person to whom such payments in an aggregate value of twenty-five dollars (\$25) or more have been made during the period by the filer, together with the date, amount and a description of the consideration received for each such expenditure and the name of the beneficiary of each expenditure if other than the filer or the payee.

that term is defined in Section 82002.<sup>4/</sup> He does not participate in any rate-making or quasi-legislative proceeding of the Department of Food and Agriculture. Accordingly, Mr. Okumura is not an agency official within the meaning of the Political Reform Act. Because Mr. Okumura is not an "agency official," Del Monte is not required to report salary payments to him on reports filed pursuant to Section 86108(a).

Approved by the Commission on September 4, 1975  
Concurring: Brodeur, Carpenter, Lowenstein, Liles  
and Waters.



Daniel H. Lowenstein  
Chairman

---

<sup>4/</sup>

Section 82002 provides:

"Administrative action" means 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).