

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)
)
 Opinion requested by) No. 75-156
 Robert L. Zenz, Deputy General Manager,) December 3, 1975
 California State Employees Association)
 _____)

BY THE COMMISSION: We have been asked the following question by Robert L. Zenz, Deputy General Manager, California State Employees Association:

The California State Employees Association has appointed one member in each of the state's 40 senatorial districts to serve as employee legislative advocates. These advocates will not be paid, but reimbursement for limited expenses will be provided and reported by the Association. Employee advocates will be selected by the Association's chief lobbyist and will work under his direction.

Is an employee legislative advocate prohibited from making or arranging contributions (Government Code Section 86202) or gifts (Government Code Section 86203) to public officials because he is supervised by a registered lobbyist?

CONCLUSION

The agent of a lobbyist may not make or arrange a contribution or gift which the lobbyist would be prohibited from making under Government Code Sections 86202 or 86203 unless it is clear that the contribution or gift is not intended to further the goals of the lobbyist and thus is outside the scope of the agency relationship.

ANALYSIS

It appears from the facts as stated that the employee advocates are not themselves lobbyists within the meaning of

Government Code Section 82039^{1/} because one of the essential elements of the definition of a lobbyist is that he must receive economic consideration. See opinion requested by George G. Hardie, Golden State Greyhound Association, 1 FPPC Opinions 140 (No. 75-003, Oct. 23, 1975). Obviously, if the employee advocates were lobbyists, they would be subject to all of the obligations and prohibitions of Sections 86100, et seq.

In the instant case, the employee representatives receive instructions, training and lobbyist materials directly from the association's chief lobbyist. They receive instructions from no other association official and any reports or questions they may have are sent by the representative directly to the chief lobbyist. Under these circumstances, the employee representatives are agents of the chief lobbyist.

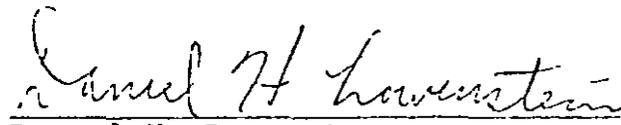
As defined by California Civil Code Section 2295: "An agent is one who represents another, called the principal, in dealings with third persons." See, e.g., Store of Happiness v. Carmela S. Allen, 152 Cal.App.2d 266, 269 (1957). Transactions performed by an agent within the scope of the agency relationship are attributable to his principal. Gipson v. Davis Realty Co., 215 Cal.App.2d 190, 205-06 (1963). Accordingly, restrictions imposed on the lobbyist bind all who act as his agents under his direction. To conclude otherwise would permit the lobbyist to accomplish, indirectly through his agents, that which he is prohibited from accomplishing directly. Therefore, the agent of a lobbyist is prohibited from making any contributions (Sections 86200, 86202) and is restricted from making gifts aggregating more than \$10 in a calendar month (Sections 86201, 86203). Moreover, since gifts of an agent are attributed to his principal, all of the gifts by the principal and his agents, when aggregated, may not exceed the \$10 limit. If, while pursuing the goals of his principal, an agent makes a gift worth \$10 to a legislator, the principal and all of his agents will be prohibited from making any other gifts to that legislator for the remainder of the month in which the gift was made.

However, an agency relationship does not inextricably bind two persons for all purposes. Agency relationships are usually limited in scope; for example, the agency relationship in this case is limited to influencing legislators with regard to the California State Employees Association's legislative goals. Thus, restrictions on the principal apply to his agent only to the degree that the agent is pursuing the principal's goals.

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All statutory references are to the Government Code unless otherwise noted.

We observe, however, that although a lobbyist's agent may therefore independently make a gift or contribution to a legislator, such actions, in many cases, undoubtedly would be connected with the agent's official duties. The agent is acting independently of the lobbyist only when it is clear from the surrounding circumstances that he is not seeking to advance the goals of the lobbyist or acting on the instructions of the lobbyist.

Approved by the Commission on December 3, 1975.
Concurring: Brosnahan, Carpenter, Lowenstein and Miller.
Commissioner Waters was absent.


Daniel H. Lowenstein
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Chairman