

State of California



Fair Political Practices Commission

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Technical Assistance • • Administration • • Executive/Legal • • Enforcement
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October 11, 1984

Fred Lowell
Pillsbury, Madison & Sutro
P.O. Box 7880
San Francisco, CA 94120

Re: Advice Letter No. A-84-240

Dear Fred:

Thank you for your letter of September 12, 1984, asking whether a lobbyist-employer must report routine fringe benefits, such as the employer's share of social security, the employer's contributions to pension or retirement plans, or employer paid health or life insurance, under 2 Cal. Adm. Code Section 18620(d)(2).

These items do not have to be reported as compensation received by the lobbyist (2 Cal. Adm. Code Section 18616(b)(1)), nor as part of the compensation paid to individual lobbyists or other employees by the lobbyist employer (2 Cal. Adm. Code Sections 18620(b), 18620(d)(1)). However, it has been our position that lobbyist-employers must include these expenditures in the lump sum amount reported under Section 18620(d)(2).

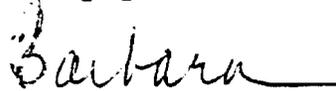
Since our Technical Assistance and Analysis Division has made this requirement explicit, you and a number of other lobbyist employers have pointed out that it is very difficult for a large organization to allocate that share of the total routine fringe benefits provided to all employees which is attributable to lobbyists or other employees whose salaries are reported under Section 18620(d)(1). I have discussed this issue with the staff, and we have now concluded that Section 18620(d)(2) should be interpreted to exclude reporting of those routine fringe benefits which are excluded from reporting in Sections 18620(b) and 18620(d)(1). We have determined that the additional benefit which the public would receive from reporting these routine fringe benefits under Section 18620(d)(2) is minimal, and that requiring the information poses a significant burden on lobbyist-employers. In addition, we believe that

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excluding these routine fringe benefits from reporting under Section 18620(d)(2) is the most reasonable interpretation of the regulation, since they are already excluded from reporting under Sections 18616, 18620(b) and 18620(d)(1). To require their reporting appears to us to be inconsistent with the intent of the other sections of the regulation.

If you have any further questions about this issue, I will be happy to talk to you about it.

Very truly yours,



Barbara A. Milman
General Counsel

BAM:plh

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September 12, 1984

Ms. Barbara Milman
General Counsel
Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Dear Barbara:

This is a request for written advice pursuant to Gov.Code, § 83114(b).

This firm files quarterly lobbying reports as a "\$2,500 filer" pursuant to the lobbying disclosure provisions of the Political Reform Act of 1974 (the "Act"). Moreover, this firm advises various clients on compliance with the lobbying disclosure provisions of the Act.

Heretofore, it has been this firm's understanding that pursuant to 2 Cal.Admin.Code, § 18620, lobbyist-employers and \$2,500 filers must report salary and compensation paid to lobbyist and nonlobbyist-employees in connection with attempts to influence legislative or administrative action, but that such payments do not include "routine fringe benefits, such as the employer's contribution to health plans, retirement plans, etc., which are made on behalf of all employees" nor do they "include the payment of the employer's payroll taxes" (2 Cal.Admin.Code, §§ 18620(b), 18620(d)(1)(C)). This rule is reiterated in the FPPC's recently amended manual on the lobbying disclosure provisions of the Act.

The FPPC rule eliminates the enormous administrative burden which would be imposed on employers if they were forced to report allocable amounts paid on behalf of

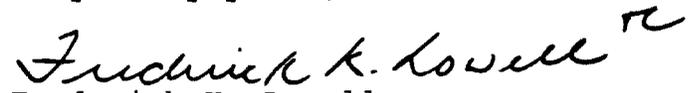
employees with respect to complicated deferred compensation schemes (pension plans, stock plans, etc.). It is, therefore, with some concern, that I recently learned that at one of the FPPC's technical advice meetings, it was stated that it is the FPPC's position that although salary burden is not reportable as "salary" or "compensation," it must be reported as "overhead" (presumably under § 18620(d)(2)(C) as an expense which would not have been incurred but for the filer's lobbying activities).*

If the above interpretation were to be adopted, the FPPC would, as mentioned above, be imposing a tremendous additional administrative burden on lobbyist-employers and \$2,500 filers. Moreover, the additional information gleaned would be generally meaningless because of the extreme complexities of today's heavily regulated deferred compensation plans.

Finally, 2 Cal.Admin.Code, § 18620(e)(1) seems to contradict such a position since that section provides that except for salary and compensation of lobbyists and nonlobbyist-employees which must be reported under § 18620(d)(1) (which, as noted above, specifically excludes salary burden), a filer need not report any regular, ongoing business overhead which would continue to be incurred in substantially similar amounts regardless of the filer's activities to influence legislative or administrative action.

I would appreciate your response at your earliest convenience. Moreover, if the FPPC is considering taking the position that salary burden is now reportable, I would appreciate being given an opportunity to formally express my views.

Very truly yours,


Frederick K. Lowell

cc: The Honorable Dan Stanford
Ms. Jeanne Pritchard

* As a matter of statutory and regulatory construction, however, the specific references excluding salary burden in § 18620(b) and § 18620(d)(1)(C) should supersede the general reference to overhead in § 18620(d)(2)(C).