



California Fair Political Practices Commission

July 22, 1987

Vigo G. Nielsen, Jr.
Nielsen, Merksamer, Hodgson,
Parrinello & Mueller
650 California Street, Suite 2650
San Francisco, CA 94108

Re: Your Request for Informal
Assistance; Our File
No. I-87-168

Dear Mr. Nielsen:

I have reviewed your memorandum regarding our telephone conversation of June 3, 1987. You have accurately summarized that conversation. As you indicated in your memorandum, the telephone advice I provided is only a preliminary analysis. I would be happy to prepare written advice on any issues which you believe require additional discussion.

Enclosed are an advice letter (Eller, No. A-85-265) and a memorandum (No. M-83-191) which discuss lobbying reporting and the meaning of "influencing legislative or administrative action." These materials appear to be our most recent advice on the subject. Please let me know if I can be of further assistance.

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan

By: Kathryn E. Donovan
Counsel, Legal Division

KED: km

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FILE NUMBER

June 19, 1987

Kathy Donovan, Esq.
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: "Lobbying Services"

Dear Kathy:

After our telephone call on June 3, 1987, I wrote a memo addendum summarizing my recollection of each of the points that we covered.

Enclosed is a copy. Would you look it over to see if I have accurately summarized our discussion. I am working on our amendments and filings, and if I am incorrect on what needs to be reported as "lobbying services," I need to know as soon as possible.

Thank you for your help. I look forward to working with you on clarifying the "gray" areas of this definition.

Very truly yours,


Vigo G. Nielsen, Jr.

VGN:dc
Encl.

M E M O R A N D U M

FROM: Chip Nielsen
DATE: June 4, 1987
RE: My Discussion With Kathy Donovan on "Lobbying Services" and Reporting Responsibilities of a "Lobbying Firm"

On June 3rd, I talked for over an hour with Kathy Donovan (916/322-5901), concerning what the FPPC considers "lobbying services."

I introduced the call by explaining that we're in the process of preparing amendments to our lobbying firm reports to show additional payments to us as "lobbying services" even though these services were not related to direct communication. For purposes of these amendments, we will include all services that the FPPC staff believes could under the most expansive definition be considered "lobbying services" even if later the staff concludes that the definition is not as expansive.

She agreed that the staff realizes that the statute uses the term "lobbying services" which is not defined. She said this is unfortunate and believes the statute should have used "influencing legislative or administrative action," which is defined in statute. She says the staff believes "lobbying services" is the same as "lobbying activity" which is the same as

"influencing legislative or administrative action," and is broadly defined.

I told her that there were six categories of work done by our law firm and other law firms which need clarification, as follows: 1) legislation related, 2) ballot measure related; 3) candidate related; 4) litigation of an existing statute; 5) litigation of proposed legislation; and 6) government affairs for a client who does have an interest in influencing legislation but where the law firm's work is not directed towards any legislation.

The following summary is my understanding of her position on each of these activities.

1. Legislation Related.

Payments that relate to "direct communication" are reportable. We agree. Payments that support the direct communication activity such as bill drafting, position papers, arranging for witnesses, and the other items specified in the manual's "lobbying activity" definition when there is actual legislation in existence and available to be influenced are reportable. We agree when the law firm/lobbying firm is directly communicating with state officials, but we contend that the payments are only lobbying overhead costs of a client if the lobbying firm does no direct communication.

Preparatory work for possible legislation before it is introduced and when it is not legislation is probably not reportable and probably there is no "relation back-doctrine" which requires it to be reported once a decision to go forward

with legislation is made. (See 6D below.) There must be some actual legislation in existence or in draft form before the support services are reportable. We agree and will ask the FPPC to confirm Kathy's tentative opinion.

2. Ballot Measure Related.

No payments to influence a ballot measure are reportable as lobbying services. But if legislation is drafted for introduction in the Legislature and then if unsuccessful to be used for a ballot measure, the entire payment is considered "lobbying services" and may not be apportioned. It is a question of fact to determine when activity is directed towards the qualification of a ballot measure, and therefore not "lobbying services." We agree.

3. Candidate Related.

No candidate related activity including PRA compliance, candidate contribution strategy, attending candidate or party fundraisers, etc., is considered "lobbying services." It is not relevant that a donor client might contribute to assist its legislative strategy. We agree.

4. Litigation of Existing Statutes.

Such legal fees are no "lobbying services." We agree.

5. Litigation Against Proposed Legislation.

Kathy thought this might be considered as "lobbying services" when the motive of the plaintiff is to delay or prohibit legislation, and we both discussed the recent California Medical Association case attempting to prevent the Governor's proposed 10% budget cuts of Medi-Cal. We disagree. We agreed

that this should be clarified. I explained that I believed that most attorneys will argue that the purpose of litigation is to clarify whether governmental action meets existing law and not to influence legislation.

6. Governmental Affairs.

A. General advice. Assistance to a multi-purpose organization, like a Chamber of Commerce, to make it generally more effective even though its primary purpose is influencing legislation is not "lobbying services." We agree. Examples given were conducting training courses for staff, including lobbyists, arranging for the redesign of letterhead and newsletter format, counseling senior executives on matters such as membership recruitment, management skills, coalition building, etc.

B. Pre-legislation reconnaissance. Providing clients information on what has happened to date, what is the present status on a subject matter, and what is the expected courses of action to affect change before there is specific legislation that might be of interest to a client is "probably not" "lobbying services" until such services focus on specific legislative action. We agree it is not, but I said that we would need to have the FPPC confirm Kathy's tentative opinion. Reconnaissance on transportation funding or tort reform in 1986 were both discussed as examples of this work prior to any focus on specific legislation.

Once there is legislative action, then continuing such reconnaissance is "lobbying services" as discussed in category 1

above. We agree it is "lobbying services" if the law firm/lobbying firm is making direct communications with state officials, but we disagree when the lobbying firm is making no direct communications for that client and contend that such payments are only lobbying overhead costs of the client.

C. Legislation Strategy at a multi-subject meeting.

Only the percentage of the meeting that relates to legislation would be considered "lobbying services" by the attending attorneys. We agree, subject to D below, if the law firm/lobbying firm is making direct communication with state officials, but we disagree when the lobbying firm is making no direct communications for that client and contend that such payments are only lobbying overhead costs of the client.

D. Meetings to strategize on legislation. Payments for an attorney to attend such meetings would be included as "lobbying services" if the reason the attorney is there is to participate in the discussion about legislation. If a corporate attorney who belongs to a lobbying firm is at such a strategy session, but is there for corporate matters (bylaws, non-profit, etc.), then his or her time is not a payment for "lobbying services." We agree on the non-inclusion for a corporate attorney who attends for non-legislation purposes. We agree that the attorney time on legislation is "lobbying services" if the lobbying firm engages in direct communication, we disagree if it does not as discussed above.

E. Coalition memberships and strengthening a client's image. Similar to the discussion in A above, when the time spent

is 1) to strengthen the operational procedures of a client that lobbies, 2) to strengthen the client's presence in a community, including the lobbying community, or 3) to strengthen the client's presence in a coalition, but without reference to specific legislation, then it is not "lobbying services." We agree.

F. Monitoring legislation. Kathy and Carla Wardlow told Kirk Pessner and me on our first phone call a week earlier that monitoring legislation is a "lobbying services." In yesterday's call Kathy confirmed this is the staff's current advice. But since our first phone call, she has met with some others on the FPPC staff and they believe that monitoring legislation should be discussed with the entire staff to discuss whether it is appropriate to include it as a "lobbying service." We believe it should be an overhead cost for a Form 635 filer but not a payment for "lobbying services" when performed by a law firm/lobbying firm that is retained to monitor legislation for that client but not to influence legislation.

This summarizes the questions on categorization of time spent or to be spent on various projects for a client.

I next asked Kathy how one handles a situation when a law firm/lobbying firm works for law firm A on "reconnaissance" without reference to any legislation (which we agree is not "lobbying services") and does not know the identity of law firm A's client (although it knows some of the clients and that industry). But then the law firm/lobbying firm work evolves into "lobbying services" and the lobbying firm has not been informed

of the actual clients. Kathy believes that there is affirmative duty on the lobbying firm to contact the law firm and secure authorizations from each of its clients who will be paying the fees. We agreed to contact Covington & Burling and have its clients authorize the work and file reports.

Finally, we discussed the Teresa Craigie advice letter. The staff advice to Pillsbury, Madison & Sutro said that if the partner billed clients for time spent in connection with serving on a state commission that such legal fees would be "lobbying services." But the advice letter did not mention whether "registration" was required. Kathy said the advice letter should not be interpreted to mean that authorization by the client was not needed. It was her memory that the clients to whom PMS would bill the work were already "employers of a lobbying firm" so the question of "authorization" in this case was moot. She confirmed that the law firm needed to seek authorizations from any unauthorized client if it planned to bill some of the partner's time to that client.

I confirmed that we would file amendments soon. After the filings are done, I suggested I call her on the most appropriate means of clarifying the remaining vagueries of the definition of "lobbying services." ~