



California Fair Political Practices Commission

May 16, 1988

Peter H. Weiner
Heller, Ehrman, White and McAuliffe
333 Bush Street
San Francisco, CA 94104-2878

RE: Your Request for Advice
Our File No. A-88-161

Dear Mr. Weiner:

You have requested advice concerning the lobbying disclosure provisions of the Political Reform Act of 1974.^{1/}

QUESTIONS

1. Does a registered lobbying firm report salary payments made to non-lobbyist employees who spend 10% or more of their time on lobbying activities?
2. To determine whether an individual who does not meet the "contacts test" contained in Regulation 18239 and who performs lobbying on a part-time basis qualifies as a lobbyist, what percentage of his or her salary is counted toward the \$2,000 "compensation test?"

CONCLUSIONS

1. The only payments a lobbying firm reports are those received from clients for lobbying activity, payments to other lobbying firms, and campaign contributions.
2. The percentage of time spent on lobbying by an individual employee is multiplied by that employee's monthly salary to determine if the \$2,000 threshold is met.

FACTS

Heller, Ehrman, White and McAuliffe is a law firm registered as a lobbying firm. A non-lobbyist attorney within the law firm performs, as part of his or her duties, lobbying activities.

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

ANALYSIS

1. Section 86114 lists that information which must be included on a lobbying firm's report to the Secretary of State. The only payments made by a lobbying firm which must be reported are 1) "each activity expense incurred by the lobbying firm" (Section 86114(a)(5)), 2) payments made to other lobbying firms (Section 86114(a)(6)(c)), and 3) the "amount...of any contribution of one hundred dollars (\$100) or more...to an elected state officer, a state candidate, a committee controlled by an elected state officer or state candidate, or a committee primarily formed to support such officers or candidates." (Section 86114(a)(7).)

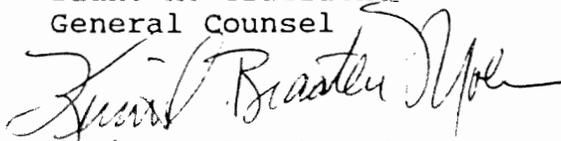
2. Section 82039 defines a lobbyist as "any individual who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which he or she receives consideration is for the purpose of influencing legislative or administrative action." (Emphasis added.)

Regulation 18239 further defines "substantial or regular." An employee who receives or becomes entitled to receive "at least \$2,000 in compensation in any calendar month for influencing legislative or administrative action" is spending a substantial or regular portion of compensated time lobbying. Thus, if a lobbying firm employee's duties include lobbying activities (including some direct communication), but are not exclusive to lobbying, the employee must calculate that portion of his or her salary received for lobbying to determine if he or she qualifies as a lobbyist. One method to make this determination is to multiply the employee's monthly salary by the percentage of time spent on all lobbying activity. If the amount is \$2,000 or more in any calendar month, the employee must file as a lobbyist, and the lobbying firm must amend its registration statement to include this employee as a lobbyist.

If you have additional questions, please contact Kevin S. Braaten-Moen at (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel



By: Kevin S. Braaten-Moen
Political Reform Consultant

3505 FIRST INTERSTATE BANK TOWER
1300 S. W. FIFTH AVENUE
PORTLAND, OREGON 97201-5696
TELEPHONE (503) 227-7400

4100 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4011
TELEPHONE (206) 447-0900

HELLER, EHRMAN, WHITE & MCAULIFFE
ATTORNEYS

2507P 88
PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
333 BUSH STREET · SAN FRANCISCO, CALIFORNIA 94104-2878
CABLE HELPOW · TELEX 184-996 · TELECOPIER (415) 772-6268
TELEPHONE (415) 772-6000

575 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
TELEPHONE (415) 326-7600

CANTON HOUSE, 1771
DUDELL STREET
HONG KONG
TELEPHONE 5-266816
TELEX 65665 LAWYR HX

PETER H. WEINER
DIRECT DIAL (415) 772-6168

April 27, 1988

Mr. Kevin Braaten-Moen
Political Reform Consultant
Fair Political Practices
Commission
428 J Street
7th Floor
Sacramento, CA 95814

Dear Mr. Braaten-Moen:

This letter confirms our recent conversation regarding application of the Act.

At issue is whether a lawyer in my office must register, or whether the Firm as an employer of lobbyists must report the salary of the lawyer. These issues arose after my secretary, Jerry Hebert, attended a conference in Sacramento regarding these issues.

First, with regard to reporting the salary of any person who makes more than 10% of his salary for lobbying, it is my understanding that a company other than a lobbying firm must report such salaries. For example, one of our clients would report the salary of a secretary or other person who spends more than 10% of their time on lobbying on the Form 635. However, Heller, Ehrman, White & McAuliffe does not have to make such reports because it is a lobbying firm.

With regard to registration, it is my understanding that a person must register if they meet the 25 contact rule in the space of any two consecutive months, or if they are entitled to receive over \$2000 in any one month for lobbying. The month is a calendar month, and the \$2000 is determined as follows. Say that an attorney received a salary of \$4000 per month. Say as well that 40% of that attorney's time is spent on lobbying. As I understand our conversation you would multiply that attorney's salary times the percentage of time he or she spent on the issue and arrive at an allocation of his or her salary for lobbying. In the example I gave you that would equal \$1600, which is less than \$2000, and registration would not be required. Obviously the amounts received for lobbying would continue to be reported as received by the Firm.

Mr. K. Braaten-Moen
04/27/88

Page 2

I believe that I have faithfully reported our conversation and my understanding of the rules. I would appreciate your confirming my accuracy by return letter. Although no person at Heller, Ehrman is even close to these limits unless they are registered, we wish to be able to plan appropriately for the future.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Peter H. Weiner".

Peter H. Weiner



California Fair Political Practices Commission

May 3, 1988

Peter H. Weiner
Heller, Ehrman, White & McAuliffe
333 Bush Street
San Francisco, CA 94104-2878

Re: 88-161

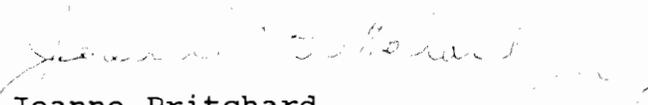
Dear Mr. Weiner:

Your letter requesting advice under the Political Reform Act was received on April 29, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh

3505 FIRST INTERSTATE BANK TOWER
1300 S. W. FIFTH AVENUE
PORTLAND, OREGON 97201-5696
TELEPHONE (503) 227-7400

4100 FIRST INTERSTATE CENTER
999 THIRD AVENUE
SEATTLE, WASHINGTON 98104-4011
TELEPHONE (206) 447-0900

HELLER, EHRMAN, WHITE & MCAULIFFE

ATTORNEYS

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

333 BUSH STREET · SAN FRANCISCO, CALIFORNIA 94104-2878

CABLE HELPOW · TELEX 184-996 · TELECOPIER (415) 772-6268
TELEPHONE (415) 772-6000

525 UNIVERSITY AVENUE
PALO ALTO, CALIFORNIA 94301-1908
TELEPHONE (415) 326-7600

CAXTON HOUSE, 17/F
1 DUDELL STREET
HONG KONG
TELEPHONE 5-266816
TELEX 65665 LAWYR HX

PETER H. WEINER
DIRECT DIAL (415) 772-6168

APR 23 2 58 PM '88
April 27, 1988

Mr. Kevin Braaten-Moen
Political Reform Consultant
Fair Political Practices
Commission
428 J Street
7th Floor
Sacramento, CA 95814

Dear Mr. Braaten-Moen:

This letter confirms our recent conversation regarding application of the Act.

At issue is whether a lawyer in my office must register, or whether the Firm as an employer of lobbyists must report the salary of the lawyer. These issues arose after my secretary, Jerry Hebert, attended a conference in Sacramento regarding these issues.

First, with regard to reporting the salary of any person who makes more than 10% of his salary for lobbying, it is my understanding that a company other than a lobbying firm must report such salaries. For example, one of our clients would report the salary of a secretary or other person who spends more than 10% of their time on lobbying on the Form 635. However, Heller, Ehrman, White & McAuliffe does not have to make such reports because it is a lobbying firm.

With regard to registration, it is my understanding that a person must register if they meet the 25 contact rule in the space of any two consecutive months, or if they are entitled to receive over \$2000 in any one month for lobbying. The month is a calendar month, and the \$2000 is determined as follows. Say that an attorney received a salary of \$4000 per month. Say as well that 40% of that attorney's time is spent on lobbying. As I understand our conversation you would multiply that attorney's salary times the percentage of time he or she spent on the issue and arrive at an allocation of his or her salary for lobbying. In the example I gave you that would equal \$1600, which is less than \$2000, and registration would not be required. Obviously the amounts received for lobbying would continue to be reported as received by the Firm.