



California Fair Political Practices Commission

September 19, 1989

Stephen E. Lenzi
Director of Public Affairs
Automobile Club of Southern California
P.O. Box 2890 Terminal Annex
Los Angeles, CA 90051-0890

Re: Your Request for Informal Assistance
Our File No. I-89-486

Dear Mr. Lenzi:

You have requested advice concerning the reporting obligations of the Automobile Club of Southern California under the Political Reform Act (the "Act").¹ Since your request is general in nature, we are treating it as a request for informal assistance.²

QUESTIONS

1. Would the filings with the Department of Insurance for automobile liability rate adjustments without prior approval prior to November 8, 1989, be considered ratemaking proceedings, the costs of which must be disclosed under the lobbying provisions of the Act?

2. Would filings to apply for prior approval to make rate adjustments after November 8, 1989, be considered ratemaking proceedings, the costs of which must be disclosed under the lobbying provisions of the Act?

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSIONS

1 and 2. Both filings would be considered ratemaking proceedings under the Act.

FACTS

Proposition 103, passed by the voters in November of 1988, made certain changes and additions to the California Insurance Code ("Insurance Code").³ In May of 1989, the California Supreme Court found most of Proposition 103 constitutional on its face. (Calfarm Ins. Co. v. Deukmejian (1989) 48 Cal.3d 805.)

As interpreted by the court, Proposition 103 provides for a reduction in rates to 20% below 1987 levels. However, insurers may file applications with the Department of Insurance to increase their rate to allow for a reasonable return on investment. If application is filed prior to November 8, 1989, the insurer may immediately begin charging the increased rate pending approval. If application is filed after that date, the rate must be approved prior to use, although an interim rate can be approved pending decision. (Calfarm, supra, at p. 825.)

The Automobile Club of Southern California and its affiliated Interinsurance Exchange (collectively referred to as "the Club") filed with the Department of Insurance on June 2 and June 14 to request maintenance of the Club's existing rates and for subsequent adjustments respectively. You wish to know whether the costs incurred relating to those filings are reportable under the lobbying disclosure provisions of the Act. You also wish to know if the costs associated with filings for prior approval of rate changes after November 8, 1989 must be reported. The Club is a lobbyist employer.

ANALYSIS

Under the Act, a lobbyist employer has specified accounting and reporting obligations. (Regulations 18615 and 18616, copies enclosed.) Pursuant to these regulations, lobbyist employers are required to keep detailed records and report, among other things, payments to influence legislative or administrative action. (Regulation 18615(a)(4); Regulation 18616(a)(4), copies enclosed.)

"Administrative action" is defined, in part, as follows:

"Administrative action" means the proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any

³ Proposition 103 added Article 10 to Chapter 9 of Part 2 of Division 1 of the Insurance Code. That article is titled, "Reduction and Control of Insurance Rates."

rule, regulation or other action in any rate-making proceeding or any quasi-legislative proceeding....

Section 82002 (emphasis added).

The Act does not define "rate-making proceeding." However, we have previously advised that the term refers to any proceeding involving the establishment of rates. (Perez Advice Letter, No. A-77-143, copy enclosed.) It applies to both increases and decreases in rates, including the refund of over-collections. (Perez Advice Letter, supra.)

The new provisions of Article 10 of the Insurance Code are located in a chapter entitled "Rates and Rating and Other Organization." (Insurance Code, Division 1, Part 2, Chapter 9.) The statutory procedure for both before and after November 8, 1989, involves an application for change of rate. (Insurance Code, Section 1861.05.)

You describe the first filing made by the Club as one for the maintenance of existing rate levels. Since Proposition 103 reduces rates to 20 percent below 1987 levels, a request to maintain existing 1989 levels is really a request for an increased rate. Therefore, a proceeding to maintain existing rates would fall with the definition of rate-making.

You also suggested in our recent telephone conversation that the filings made prior to November 8, 1989, could be classified as a notification to the Department of Insurance of a change in rates, rather than a proceeding to establish a rate, since no prior approval is required. However, the filings are made in conjunction with the rate-change process. The fact that the Club will be allowed to use the new rate pending approval of its use does not change the fundamental character of the proceeding.

Based upon the above, we would conclude that the Proposition 103 filings are rate-making proceedings and, thus, "administrative action" under the Act. Therefore, the accounting and reporting requirements of Regulations 18615 and 18616 are applicable.

You have requested information with respect to the different reporting requirements provided in connection with ratemaking proceedings before the Public Utilities Commission ("PUC"). Regulations 18615 and 18616 contain provisions specifically relating to the PUC. While lobbyist employers must report certain information,⁴ they do not have to report the information requested in subdivision (f) with request to filings in connection with ratemaking proceedings before the PUC. Subdivision (f) provides for the reporting of compensation paid to employees other than lobbyists who spend 10 percent or more of their compensated time

⁴ The basic information to be reported by all filers can be found in Regulation 18616 (a) - (e).

per month in connection with influencing legislative or administrative action.

The regulation contains the following exemption for filers in ratemaking proceedings before the PUC:

(g) Exceptions.

* * *

(4) In lieu of reporting expenses in accordance with subsection (f), a filer shall report, on a separate schedule furnished by the Commission, any expenses incurred in connection with administrative testimony in any ratemaking proceeding before the California Public Utilities Commission or any other proceeding which is held in connection with a ratemaking proceeding before the California Public Utilities Commission. The filer shall report the total of the following:

(A) Compensation paid to all attorneys for time spent appearing as counsel in those proceedings.

(B) Compensation paid to all witnesses for time spent testifying in those proceedings.

(C) For purposes of this subsection, "compensation" shall have the same meaning as in subsection (f)(1).

Regulation 18616(g)(4).

Any similar exemption for filers in ratemaking proceedings before the Insurance Commissioner would require an amendment to the regulation.

If you have any questions concerning this letter, you may contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa
Enclosures

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Automobile Club of Southern California

P.O. BOX 2890 TERMINAL ANNEX, LOS ANGELES, CALIFORNIA 90051-0890

STEPHEN E. LENZI
 DIRECTOR
 PUBLIC AFFAIRS

July 28, 1989

FPPPC
 Aug 10 2 58 PM '89

Ms. Margaret Ellison
 Legal Staff Counsel
 Fair Political Practices
 Commission
 728 J Street, Suite 800
 Sacramento, CA 95814

Dear Ms. Ellison:

This will confirm our telephone conversation on July 27 in which it was concluded that costs incurred by the Automobile Club of Southern California and its affiliated Interinsurance Exchange relating to recent filings with the Department of Insurance are not reportable pursuant to the Fair Political Practices Act.

The filings occurred on June 2 and June 14 of this year, and provide for the maintenance of the Exchange's existing rate levels and subsequent adjustments, respectively. The filings were made as a result of the adoption of Proposition 103 on the November, 1988 statewide ballot.

It is my understanding that the conclusion that costs are not required to be reported was based upon an interpretation of Section 18202(a)(1), Title 2 of the Administrative Code, and applies only to filings made with the Department of Insurance prior to November 8, 1989. It is also my understanding that no conclusion has been reached by you or your staff regarding later filings.

Thank you for the assistance and your timely consideration.

Very truly yours,

A handwritten signature in cursive that reads "STEPHEN E. LENZI".

STEPHEN E. LENZI
 Director
 Public Affairs



California Fair Political Practices Commission

August 18, 1989

Stephen E. Lenzi
Director, Public Affairs
Automobile Club of Southern California
P.O. Box 2890
Terminal Annex
Los Angeles, CA 90051-0890

Re: Letter No. 89-486

Dear Mr. Lenzi:

You have requested confirmation of advice under the Political Reform Act. We have reviewed your request and determined that it is not appropriate for response with a simple confirmation. Therefore, we will be preparing a fuller analysis of the issues raised in your letter to us. After the analysis has been prepared and approved, we will forward it to you as quickly as we can.

If you have any questions, you may contact me at (916) 322-5901.

Sincerely,

A handwritten signature in cursive script, appearing to read "Margaret W. Allen".

Counsel, Legal Division

MWE:plh:confadv2

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