



California Fair Political Practices Commission

December 20, 1989

Joanna Steinman
Office Manager
West Coast Regional Office
Consumers Union
1535 Mission Street
San Francisco, CA 94103

Re: Your Request For Informal Assistance
Our File No. I-89-629

Dear Ms. Steinman:

You have requested advice concerning the reporting obligations of the Consumers Union 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

QUESTION

Your organization employs lobbyists who also are attorneys. Must you allocate as "lobbying time" time spent by the attorneys in connection with ratemaking hearings before the Insurance Commissioner?

CONCLUSION

As a lobbyist employer, Consumers Union must report payments to its employees who are lobbyists. This would include time spent by lobbyists who are attorneys representing Consumers

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).)

Union in connection with hearings before the Insurance Commissioner in ratemaking proceedings.

FACTS

The Department of Insurance has noticed hearings to determine insurance rates and related issues. Consumers Union has been granted permission to intervene in those hearings and present evidence before the administrative law judge. The administrative law judge will then make an initial decision which must be adopted or rejected by the Commissioner of Insurance.

You indicate that these proceedings are adjudicatory in nature and that ex parte communications with the Commissioner of Insurance are strictly forbidden. Communications with other personnel of the department are either made in open court or are of the type which normally occur between counsel for different parties in litigation.

Several registered lobbyists employed by Consumers Union are attorneys. These attorneys have spent a significant amount of time representing Consumers Union in connection with these adjudicatory hearings. You wish to know whether this time should be counted as lobbying time when allocating the salaries of these employees.

ANALYSIS

Under the Act, a lobbyist employer has specified accounting and reporting obligations. (Section 86116; Regulations 18615 and 18616, copies enclosed.) 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).)

"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 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.)

In accordance with this view, we have advised that the Proposition 103 filings are rate-making proceedings and, thus,

"administrative action" under the Act. Therefore, the accounting and reporting requirements of Section 86116 and Regulations 18615 and 18616 are applicable. (Lenzi Advice Letter No. I-89-486, copy enclosed.)

You have indicated that you consider the hearings before the Insurance Commissioner to be quasi-judicial in nature. Previously, we have distinguished between proceedings that are quasi-judicial rather than quasi-legislative when determining whether the proceedings constitute "administrative action" under Section 82002. (In re Carson (1975) 1 FPPC Ops. 46; In re Leonard (1976) 2 FPPC Ops. 54, copies enclosed.)

However, Section 82002 specifically categorizes "rate-making" as "administrative action." It is only in proceedings which do not involve "rate-making" that we have authority to distinguish between quasi-legislative and quasi-judicial proceedings.

The next issue that you raise is whether the time spent representing Consumers Union by registered lobbyists who are employees of Consumers Union and who also are attorneys should be counted as lobbying time when allocating the salaries of these employees.

Regulation 18616 requires that payments to lobbyists be reported. (Regulation 18616(a)(2).) The regulation permits a lobbyist employer to apportion the payments based on the percentage of the lobbyist's compensated time which is spent influencing or attempting to influence legislative or administrative action. (Regulation 18616(c).)

The regulation does not contain any exemption which would exclude the participation of the attorneys at the administrative rate-making hearings. (Abbott Advice Letter, No. A-88-164, copy enclosed.) Therefore, the time spent on these hearings must be included in the allocation of lobbying time.

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures



Publisher of Consumer Reports

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Oct 30 9 25 AM '89

October 27, 1989

State of California
Fair Political Practices Commission
428 "J". St., Suite 800
P.O. Box 807
Sacramento, CA 95804

181629

Re: Request for Advice on Reporting of Time Devoted
to Appearing as Intervenor in Adjudicatory Proceedings

Dear People:

It is our practice to report time spent on legislative activities of regulatory agencies, such as discussing pending or proposed legislation, as lobbying. Last quarter, however, we became involved in a new kind of activity before the Department of Insurance, and we seek advice as to whether time devoted to it should be counted as lobbying time for reporting purposes.

Under Proposition 103, the Department of Insurance has noticed a number of hearings to determine allowable insurance rates and related issues. Consumers Union's petition to intervene in those hearings was granted. The granting of the petition gives Consumers Union the same rights as the insurance company and the Department of Insurance to appear and present evidence before an administrative law judge who will make an initial decision that must then be adopted or rejected by the Commissioner of Insurance.

We do not believe that it is appropriate to characterize participation in such adjudicatory proceedings as lobbying, since the proceeding is very similar in type and rules to a court proceeding. Unlike other types of regulatory proceedings, ex parte communications with the Commissioner of Insurance are strictly forbidden. Communications with other Department personnel are either made in open court before the administrative law judge or are of the type which normally occur between counsel for different parties in litigation.

Several of our registered lobbyist employees are also attorneys who have spent a significant portion of their time in the past and current quarter representing Consumers Union in connection with these adjudicatory hearings of the Department of Insurance. We therefore would appreciate your advice on whether this time should be counted as lobbying time when we allocate the salaries of these employees.

Because of the necessity to file last quarter's report by the October 31 deadline, we have gone ahead and included the above time in the report. If this is determined to be incorrect, we will amend the report.

Thank you very much for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Joanna Steinman".

Joanna Steinman
Office Manager
West Coast Regional Office



California Fair Political Practices Commission

November 2, 1989

Joanna Steinman
Consumers Union
1535 Market Street
San Francisco, CA 94103

Re: Letter No. 89-629

Dear Ms. Steinman:

Your letter requesting advice under the Political Reform Act was received on October 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison an attorney in the Legal Division, directly at (916) 322-5901.

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 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,

Kathryn E. Donovan
Kathryn E. Donovan
General Counsel

KED:plh