



California Fair Political Practices Commission

May 4, 1990

Catherine Hanson
General Counsel
California Medical Association
P. O. Box 7690
San Francisco, CA 94120-7690

Re: Request for Supplemental Advice
Our File No. A-89-677

Dear Ms. Hanson:

As a follow-up to our meeting of April 6, 1990, this letter will confirm our discussion of the procedures necessary to implement the advice previously provided to Vigo G. Nielsen, Jr., No. A-89-677, on behalf of the California Medical Association. The letter to Mr. Nielsen addresses issues under the lobbying disclosure provisions of the Political Reform Act.^{1/}

FACTS

The Medical Administrators of California ("MAC") wishes to contract with the California Medical Association ("CMA") for lobbying services, including representation by CMA's employee lobbyists. We had advised Mr. Nielsen that such an arrangement would require CMA's lobbyists to register as lobbying firms. During our meeting on April 6, 1990, I agreed to provide written instructions to assist you in the mechanics of registering CMA's employee lobbyists as lobbying firms.

DISCUSSION

Lobbying Firm Registration and Reporting

Each CMA lobbyist who will engage in direct communication on behalf of both CMA and MAC must register as a lobbying firm. To accomplish this, each lobbying firm/lobbyist must do the following:

1. Complete Form 601 (Lobbying Firm Registration Statement), listing both CMA and MAC as "lobbyist employers" in Part II.

^{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. Obtain two Forms 602 (Lobbying Firm Activity Authorization), one signed by CMA and one signed by MAC.

3. Complete Form 604 (Lobbyist Certification Statement). In the section at the top of the form requesting the "Name of Lobbyist Employer or Lobbying Firm," each lobbyist should enter his or her own name.

These registration forms should be filed with the Secretary of State within 10 days of any agreement for lobbying services between CMA and MAC. The Secretary of State's office has informed me that each lobbying firm/lobbyist will be required to pay a \$25 registration fee, but that new photographs will not be necessary until the regular registration renewal process takes place at the end of 1990.

At the end of each calendar quarter, each lobbying firm/lobbyist must complete and file the following reports:

1. Form 615 (Lobbyist Report). This is the same reporting form each lobbyist has been filing in the past. However, the Form 615 will no longer be filed with the Form 635 (Report of Lobbyist Employer) filed by CMA. Instead, the Form 615 will be filed with the Form 625, as described below.

2. Form 625 (Report of Lobbying Firm). Each lobbying firm/lobbyist must complete Form 625 each calendar quarter. In Part II of Form 625, each lobbyist must disclose both CMA and MAC as lobbyist employers with which the lobbying firm/lobbyist contracts. You indicated that MAC will not make payments directly to the lobbying firm/lobbyists, but that CMA will receive all payments. Each lobbyist will continue to receive the same amount of salary or other compensation from CMA that he or she received in the past.

For purposes of disclosure, we agreed that the amount paid to CMA by MAC could be allocated evenly among the lobbying firm/lobbyists. Therefore, each lobbying firm/lobbyist will disclose as payments from CMA the amount of his or her salary or other compensation received from CMA reduced by his or her allocated portion of the payment from MAC to CMA. Then, each lobbying firm/lobbyist will disclose as payments from MAC the allocated amount.^{2/} When disclosing payments from MAC, each lobbying firm/lobbyist should also include a footnote explaining that payments from MAC are received directly by CMA and not the individual lobbying firm/lobbyist. Following is some suggested language for the footnote:

^{2/} As we discussed, this procedure is for purposes of disclosure under the Political Reform Act only and should not affect the lobbyists' tax status.

Payments disclosed from the Medical Administrators of California are received by the California Medical Association (CMA) under a contract between those two entities. All compensation received by the lobbying firm is received in the form of salary to the individual lobbyist who is an employee of CMA. However, in order to reflect that the lobbyist in fact represents both entities, the lobbyist has registered as a lobbying firm and salary payments received from CMA have been reduced to reflect a portion of the fee paid by the Medical Administrators of California to CMA.

This footnote should be included on each quarterly disclosure report (Form 625).

Lobbyist Employer Registration and Reporting

It will also be necessary for CMA to amend its registration to reflect the change in status of its lobbyists. CMA should file a Form 605 (Amendment to Registration) explaining that the individual lobbyists should be deleted from CMA's registration as in-house employee lobbyists and that CMA will now be disclosing the payments it makes to the lobbyists as payments to lobbying firms. If all of the lobbyists employed by CMA register as lobbying firms, CMA will no longer be required to register as a lobbyist employer, but will retain its status as a lobbyist employer on the basis of its relationship with the lobbying firms.

For purposes of the quarterly disclosure reports, CMA must still file Form 635 (Report of Lobbyist Employer) each calendar quarter. However, CMA will no longer attach to its reports the Lobbying Reports (Form 615) of those lobbyists who have become lobbying firms. In addition, instead of disclosing payments to the lobbyists under Part III.A. (Payments to In-House Employee Lobbyists), such payments will be disclosed in Part III.B. (Payments to Lobbying Firms). When disclosing payments to each lobbying firm/lobbyist, CMA should disclose the amount paid to each lobbying firm/lobbyist reduced by the amount of MAC's payment which has been allocated to each.

Copies of the appropriate registration and disclosure forms are enclosed. I hope this information has been helpful. Please do not hesitate to contact me if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel

Carla Wardlow
By: Carla Wardlow
Assistant Division Chief
Technical Assistance &
Analysis Division

Enclosures



California Fair Political Practices Commission

December 26, 1989

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

Re: Your Request for Advice
Our File No. A-89-677

Dear Mr. Nielsen:

You have requested advice on behalf of the California Medical Association concerning the lobbying disclosure provisions of the Political Reform Act.¹

QUESTION

May the California Medical Association ("CMA") file lobbying disclosure reports as both a lobbyist employer and a lobbying firm?

CONCLUSION

CMA does not meet the definition of a "lobbying firm." Therefore, CMA may not file lobbying disclosure reports as both types of filers.

FACTS

CMA is a professional association which has a number of employee lobbyists on staff. CMA is a lobbyist employer and files lobbyist employer disclosure reports. CMA has been asked to do a small amount of lobbying for a related organization, and would like to have its employee lobbyists perform the work. CMA will receive payments for the lobbying.

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

The Act requires lobbyists, lobbyist employers and lobbying firms to register and file periodic reports disclosing payments made and received in connection with influencing or attempting to influence legislative or administrative action. (Section 86100, et seq.) Section 82038.5 states:

(a) "Lobbying firm" means any business entity, including an individual contract lobbyist, which meets either of the following criteria:

(1) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a lobbyist.

(2) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing legislative or administrative action.

(Emphasis added.)

The term "business entity" is defined in Section 82005 to mean:

...any organization or enterprise operated for profit, including but not limited to a proprietorship, partnership, firm, business trust, joint venture, syndicate, corporation or association.

(Emphasis added.)

We believe the "lobbying firm" definition is intended to apply only to business entities, including individual contract lobbyists, which are in the business of providing lobbying services. Our research also indicates that CMA does not meet the definition of "business entity." In addition, we believe the analysis contained in the letter to Robert Wolf, No. A-86-150, which was cited in your letter, is still correct. Therefore, CMA may not be registered and file disclosure reports as both a lobbyist employer and a lobbying firm. If CMA receives payments from the other organization for the purpose of having CMA's

employee lobbyists lobby on behalf of the other organization, the lobbyists themselves must register as lobbying firms.

Please call me at (916) 322-5662 if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel

Carla Wardlow

By: Carla Wardlow
Assistant Chief, Technical
Assistance & Analysis Division

LAW OFFICES OF
**NIELSEN, MERKSAMER,
HODGSON, PARRINELLO & MUELLER** FPPC

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

650 CALIFORNIA STREET, SUITE 2650

SAN FRANCISCO, CALIFORNIA 94108

TELEPHONE (415) 989-6800

SACRAMENTO

770 L STREET, SUITE 800
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 446-6752

Nov 27 9 22 AM '89

FILE NUMBER

6205.01

November 21, 1989

Ms. Carla Wardlow
Technical Assistance
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Lobbyist Employer Also Being A Lobbying Firm

Dear Carla:

This letter requests reporting/disclosure advice in a very unusual circumstance in which a trade association (that already is a lobbyist-employer) wants to receive payments from another association that has not been a lobbyist-employer to lobby on a matter.

Because of the complexity of the circumstances, we request your advice as to whether a proposed disclosure method outlined below is permissible.

FACTS

The California Medical Association (CMA) is a professional association of California doctors. It employs a number of employee lobbyists and, at present, retains one contract lobbyist. It files a Form 635 each quarter, each of its employee lobbyists files a Form 615, and its contract lobbyist files a Form 625.

The CMA has been asked to accept payments for doing a small amount of lobbying for a related medical organization. As part of the proposed arrangement, the CMA would use its employees who are in-house lobbyists to perform the work; however, those employees would not receive any additional payments, directly or indirectly, other than their normal salaries for performing these services. All parties are willing to report this engagement, the legislation influenced, and the payments made and received. But because of the centralized bookkeeping at CMA, and because each employee lobbyist wants to remain an employee as discussed below, it will be very difficult for the CMA lobbyists to each "constitute him or herself" as a lobbying firm to accommodate the

Ms. Carla Wardlow
November 21, 1989
Page 2

method of reporting advised in the letter to Robert Wolfe (A-86-150).

WOLFE ADVICE LETTER (A-86-150)

On June 2, 1986, you wrote to Robert Wolfe (A-86-150) explaining how employee lobbyists and their employer would need to reorganize themselves if the employer and/or the employees were to accept payments from one or more clients (hereinafter "contract clients") for lobbying services to be done by the employee lobbyists. The advice explained that an employer of a lobbyist cannot also be a lobbying firm (Government Code §82039.5), and therefore each employee lobbyist must him or herself become a lobbying firm and be retained by his or her employer and by each of the contract clients. This advice means that the employer and each contract client would file a Form 635, and each lobbyist would file a Form 625 and a Form 615.

We agree that this reporting method is one way to provide all the information required under the Political Reform Act. But if one or more contract clients is actually retaining the association to lobby, requiring an employee to be a "lobbying firm" creates a status that does not really exist. And CMA's attorney is also concerned that the employees who would file reports certifying that they were lobbying firms with two or more clients would be defined as independent contractors by the Internal Revenue Code and, therefore, would be required to pay self-employment tax and otherwise comply with such IRC rules.

PROPOSED METHOD TO FULLY DISCLOSE

We would like you to consider an alternate reporting method that also provides full disclosure but more accurately identifies what the true situation really is, maintains an accounting and reporting system that already exists within the association, and does not raise the self-employment tax and certification problem.

As you know, Government Code §82039.5 says that a lobbyist employer (a Form 635 filer) is other than a lobbying firm (a Form 625 filer). This properly clarifies that Form 635 and Form 625 filers both need to file. This section does not, in our opinion, prevent additional Form 625 reporting by a Form 635 filer in a manner that provides all required information on existing FPPC forms.

The following alternative to the Wolfe advice also provides full PRA disclosure and more accurately discloses what is actually happening.

1. If CMA is to lobby for a contract client, it would register as a lobbying firm by filing Form 601 and identify the contract client as its "client." The contract client would file Form 602.
2. Each quarter CMA would continue to file a Form 635 showing all its payments, including salaries and reimbursed expenses to its in-house lobbyists (who would now work for CMA and the contract client(s)); its payments to retained lobbying firms; its activity expenses and other reportable payments. Consequently, the content of the Form 635 would be identical to the present CMA filing, except we would suggest the report include an explanative "cross reference" as discussed in No. 5 below.
3. We suggest that CMA would now also file a Form 625 as a lobbying firm to disclose the sources of total revenue received during that quarter. This would be the actual payment(s) received from its contract client(s) (namely the other medical organizations).

On part II of Form 625 we would disclose: 1) the contract medical organization(s) for which CMA lobbied, the payments received for that lobbying and the legislative and/or state agency administration action influenced.

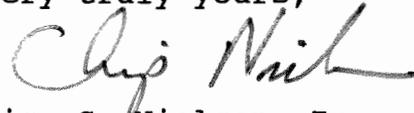
4. The lobbyists would continue to file their own Form 615s.
5. We would attach to either the Form 635 or the Form 625, or both (depending on which you felt would be most clear), the other form or attach a page that explains these facts and thereby provides a cross-reference. Or we could designate the CMA Form 635 as a "Form 635/625" and merely attach "Part II" of the Form 625 to it.
6. A medical organization making payments to CMA would file its own Form 635 and on Part III, Section B would show its payments to CMA.

Ms. Carla Wardlow
November 21, 1989
Page 4

This reporting would provide full and complete disclosure during the quarter by all organizations and lobbyists.

We ask that you consider this alternative to your earlier advice. I will be happy to discuss this matter at your convenience.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Vigo Nielsen, Jr.", written in dark ink.

Vigo G. Nielsen, Jr.

VGN:dlt
cc: California Medical Association



California Fair Political Practices Commission

November 29, 1989

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

Re: Letter No. 89-677

Dear Mr. Nielsen:

Your letter requesting advice under the Political Reform Act was received on November 27, 1989 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
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

JP:plh