BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: Opinion requested by League of California Milk Producers	No. 75-015 May 1, 1975

BY THE COMMISSION: We have been asked the following question by Carol Bald, Executive Secretary of the League of California Milk Producers:

An employee of the League of California Milk Producers was involved in an automobile accident with a car driven by a member of the State Legislature. The League of California Milk Producers is the employer of a lobbyist and a "filer" under Government Code Section 86109.1/ Must the League of California Milk Producers report the settlement by its insurance carrier as an exchange under the Political Reform Act of 1974?

CONCLUSION

The League of California Milk Producers is not required by Government Code Section 86109(d) to report the settlement between its insurance carrier and the legislator so long as the League took no active part in the settlement negotiations.

ANALYSIS

Section 86109 requires the employer of a lobbyist to file reports including the name of any legislative official,

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1/ All statutory references are to the Government Code unless otherwise noted.

> with whom the filer has engaged in an exchange of money, goods, services or anything of value and the nature and date of each such exchange and the monetary values exchanged, if the fair market value of either side of the exchange exceeded one thousand dollars ....
>
> Section 86109(d).

Although the settlement of claims arising out of an auto accident may well constitute an "exchange" within the meaning of Section 86109(d), we must consider whether the insured person (i.e., the League) is a party to and has thus "engaged in" the exchange. In other words, is the payment from the insurance company to the legislator attributable to the League?

If the carrier is acting as the agent of the filer, then the payment is attributable to the filer. A principal is responsible for the acts of his agent, Majors v. Butler, 99 C.A.2d 370 (1950). However, the existence of an agency relationship is to be determined by the relationship of the parties, Pagan v. Spencer, 104 C.A. 2d 588 (1951). The primary test of the agency relationship is the right of control, Cox v. Kaufman, 77 C.A.2d 449 (1946). Accordingly, when the insurance carrier makes the payment to the legislator, the League has "engaged in an exchange" only if it exercised some control over the negotiations leading to the settlement.

Negotiations regarding settlement are normally between the carrier and the injured party. Assuming that the claim does not exceed the limit of the insurance policy, the insured ordinarily has no right of veto if the carrier determines a settlement at a particular amount is the best way of discharging liability toward the third party. The employee of the League who was involved in the accident presumably cooperated with the carrier and supplied information regarding circumstances of the accident. If the employee contended no liability existed based on his actions, this could have had an effect on the settlement negotiations. However, if he contended payment should be made because he was at fault, the carrier would not have been bound to make payment based on this contention. In any case, the employee's statements were presumably not under the control of the League. The League could not direct its employee to make false statements regarding the accident because of any desire to oblige the legislator.

If any agent of the League participated in the settlement negotiations or in any way took part in the decision regarding payment, the League would be responsible for the payment and would be required to disclose it if it is otherwise reportable. If the only action taken by the League was the recounting by the employee of the facts and circumstances of the accident, then no control was exercised by the League and it was not responsible for the payment. Under those circumstances, there would be no danger of the League having provided favorable treatment to the legislator (see the Comment to the Commission's emergency regulation on "exchanges," 2 Cal. Adm. Code Section 18601), and the settlement would not constitute a reportable exchange under Section 86109(d).

Approved by the Commission on May 1, 1975. Concurring: Brosnahan, Miller, Waters and Lowenstein. Commissioner Carpenter was absent.

Daniel H. Lowenstein
Chairman