BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: Opinion requested by John C. Morrissey Pacific Gas and Electric Company	No. 75-066 October 1, 1975

BY THE COMMISSION: We have been asked the following questions by John C. Morrissey, Pacific Gas and Electric Company:

The Pacific Gas and Electric Company (hereinafter PG&E) employs several lobbyists and approximately 26,000 other residents of the State of California, among whom there are undoubtedly certain individuals who are legislative officials, agency officials, state candidates, or members of the immediate families of such officials and candidates. PG&E has asked the following questions concerning its reporting obligations as an employer of lobbyists:

(1) Are salary payments to such persons subject to disclosure as exchanges under Government Code Section 86109(d)?[1]

(2) If such salary payments are subject to disclosure as exchanges, are "fringe benefits" and other forms of indirect compensation paid for the benefit of employees also subject to disclosure and included in determining whether the employee has received in excess of $1,000 in salary?

(3) Are salary payments to such persons subject to disclosure as "payments to influence legislative or adminstrative action" under Section 86109(c)?

(4) If such salary payments are subject to disclosure as payments to influence, are "fringe benefits" and other forms of indirect compensation paid for the benefit of all employees also subject to disclosure? If salary payments to such individuals are subject to disclosure by PG&E, either as "exchanges" or "payments to influence legislative or administrative action," then

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

(5) Is PG&E obliged to contact each employee to determine whether he or she is an elected state official, legislative official, agency official, state candidate or member of the immediate family of such an official or candidate?

(6) If not, what actions must PG&E undertake to assure that it will not be liable for any failure to disclose such information?

CONCLUSION

(1) Salary payments to such individuals are subject to disclosure as exchanges under Section 86109(d) if salary payments have exceeded $1,000 during the calendar year.

(2) Routine fringe benefits are not included in determining whether the employee has received more than $1,000 in the calendar year, but payments in lieu of wages are includable.

(3) and (4) Salary payments are not "payments to influence legislative or administrative action," as defined in Section 82045, and are not reportable under Section 86109(c).

(5) PG&E has no duty to ascertain which employees are legislative officials, agency officials, state candidates or members of the immediate families of officials or candidates. The employer must report on the basis of information in his possession at the time of filing.

(6) PG&E will not be liable for any failure to disclose salary payments to such persons unless or until the Commission adopts a list of "specified persons." 2 Cal. Admin. Code Section 18650.

ANALYSIS

(1) Pursuant to Sections 86100(a) and 86109, an employer of lobbyists is required to file periodic reports containing information pertinent to the lobbyists' activities. Among the information which must be disclosed is:

> The name and official position of each elective state official, legislative official and agency official, the name

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of: Opinion requested by Dugald Gillies, Vice President California Association of Realtors	No. 75-063 November 4, 1975

BY THE COMMISSION: We have been asked the following questions by Dugald Gillies, Vice President of the California Association of Realtors:

The California Association of Realtors will sponsor its fourth annual Legislative Day in Sacramento. It will be attended by realtors, realtor associates and employees of local boards of realtors. The event this year is scheduled to parallel with a meeting of the Association's Board of Directors, and some of the people attending Legislative Day also will attend the Board of Directors' meeting. The salient facts are as follows: The program involves, among other things, contact with legislators from the districts of individual realtors. Employees of local boards attending the program will not be paid compensation for this activity. It is, however, the practice of many local boards to reimburse their members for expenses incurred in attending the program.

The California Association of Realtors is an employer of a lobbyist. A few of the local boards of realtors also are employers of lobbyists, but this opinion is not concerned with these boards.

(1) If a local board expends $250 or more during a month to reimburse individuals for expenses incurred in attending Legislative Day and the Board of Directors' meeting, is this a payment to influence legislative or administrative action?

(2) Would such a board become an employer of a lobbyist and be required to file a report?

(3) If a report were required, but no further amounts were expended in subsequent months, would reports be required for the subsequent months?

(4) If a board sponsors a dinner to which their legislative representatives are invited, and the board incurs $250 or more in expenses, what are the reporting requirements under Proposition Nine?

(5) Would the answer to question No. 4 be different if the legislator paid for the cost of his meal at the dinner?

(6) In the event that a local board did not incur any expenses in connection with Legislative Day, but did incur $250 or more in expenses in connection with sending members to the Board of Directors' meeting, and if the proportion of participation in activities related to the legislative program resulted in $250 or more in expenditures for that purpose, would the local board thus become an employer of a lobbyist and be required to report?

CONCLUSION

(1) A payment of $250 or more reimbursing expenses incurred by attendees at Legislative Day and the Board of Directors' session is a payment to influence legislative action.

(2) A local board would not be an employer of a lobbyist but would be required to file a report.

(3) No reports would be required for any month in which no payments are made.

(4) The local board is required to report the amount expended on dinners which their legislative representatives attend as a payment to influence legislative or administrative action.

(5) The conclusion to question No. 4 is not altered by the fact that the legislator pays the cost of his dinner.

(6) A local board making a payment of $250 or more to send members to the Board of Directors' meeting for the purpose of participation in the legislative program is required to report, although it does not thereby become an employer of a lobbyist.

ANALYSIS

(1) Any person who makes payments of $250 or more in value in any month to influence legislative or administrative

> of each state candidate, and the name of each member of the immediate family of any such official or candidate with whom the ... [employer] 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 ($1,000).

Section 86109(d).

If PG&E employs any of the persons specified in Section 86109(d), the company engages in an exchange with that individual.2/ The employer makes periodic salary payments in exchange for the services furnished by the employee.3/

Section 86109(d) requires that exchanges be reported if the "fair market value of either side of the exchange exceeded one thousand dollars ($1,000)." In most exchanges, the consideration exchanged is easily identifiable and can be valued without difficulty. However, an employment relationship is a unique type of exchange because of the ongoing and continuous nature of the relationship. In an employer-employee relationship the employee renders continuing services in exchange for periodic salary payments. There is a continuous exchange between employer and employee rather than a series of discrete exchanges. In those circumstances, we conclude that the salary payments to a specified employee must be reported if the payments have totaled $1,000 during the calendar year.

2/ The term "agency official" as used in Section 86109(d) refers to agency officials of those agencies which are or should be listed on the lobbyist's registration statement under Sections 86101(c) and 86103. 2 Cal. Admin. Code Section 18600.

3/ The term "exchange" is further defined by regulation to exclude those transactions in which the lobbyist employer offers goods or services on identical terms to the public at large and the goods or services are purchased by a person specified in Section 86109(d). 2 Cal. Admin. Code Section 18650. That exception is not applicable to the circumstances set forth in this opinion request. In this case PG&E employs persons specified in Section 86109(d) and seeks to ascertain what reporting obligations, if any, are imposed by the employment relationship. An offer of employment is not an offer of goods and services made on identical terms to the public at large. On the other hand, the exception set forth in 2 Cal. Admin. Code Section 18650 makes it clear that PG&E is not required to report the monthly PG&E bills paid by specified persons as long as electric power is sold on identical terms to the general public.

The employer must report the cumulative salary payments during the first month of the calendar year in which payments to the employee total $1,000 and must report the salary payments during each month thereafter for the remainder of the calendar year.

(2) Routine fringe benefits need not be considered in determining whether $1,000 has been paid to a specified employee.

Certain fringe benefits, such as the employer's contribution to health plans, retirement plans and employee life insurance are so routinely included in the employment relationship that no purpose would be served by requiring the employer to keep a separate accounting of the value of these fringe benefits. However, any benefits in lieu of wages such as the granting of stock options or the purchase of annuities are includable in determining whether $1,000 has been paid to the employee.4/

(3) and (4) Salary payments to legislative officials, agency officials, state candidates or members of the immediate families of such officials or candidates are not reportable under Section 86109(c) as "payments to influence legislative or administrative action." "Payments to influence legislative or administrative action" is defined by Section 82045(c) to include:

> (c) [Any][p]ayment which directly or indirectly benefits any elective state official, legislative official or agency official or a member of the immediate family of any such official.

Although it would be possible to conclude that salary payments are within this definition, closer consideration of the Act leads to a contrary conclusion. Salary transactions are already reportable by the employer as exchanges under Section 86109(d). Duplicating these reports by listing the payments as both "exchanges" and as "payments to influence" would create redundant reporting and tend to obscure other payments properly listed under that heading. A statute should be interpreted in such a way as to give meaning to each part (Code of Civil Procedure, Section 1858, First Federal Savings & Loan Ass'n. of Altadena v. Johnson, 49 C.A.2d 465 (1944)). If "payment to influence" under Section 82045(c) were interpreted to include an "exchange," there would be no purpose in the "exchange" section of the Act, since the result would be an entirely duplicative report. Furthermore, the $1,000 threshold for reporting exchanges under Section 86109(d) would be rendered meaningless.

4/ See 2 Cal. Admin. Code Section 18620(c); routine fringe benefits given lobbyists are not reportable by lobbyist employers.

(5) and (6) At the present time, the lobbyist employer has no affirmative obligation to obtain the names of specified persons. For the purposes of reporting under Section 86109(d), the lobbyist employer is deemed to have used reasonable diligence in the preparation of the report if the employer reports on the basis of information in his possession at the time of filing.5/ The employer is not required to make specific inquiry concerning the status of its employees unless such inquiry would be made in the ordinary course of business. If the Fair Political Practices Commission publishes a list of elective state officials, legislative officials, agency officials, state candidates and their immediate families, the lobbyist employer will be deemed to have knowledge of such persons and will be required to report those exchanges which exceed $1,000, in accordance with 2 Cal. Admin. Code Sections 18650(c) and (d), which provide:

> (c) In the absence of a list of specified persons and specified business entities published by the Commission, filers reporting exchanges under Government Code Sections 86107 and 86109 are required to report only otherwise reportable exchanges with persons or business entities actually known to be specified persons or specified business entities on the basis of information in the possession of filers at the time of the filing. There is no requirement to make specific inquiry of persons or business entities unless such inquiry would be made in [the] ordinary course of business.
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> (d) In the event the Commission publishes a list of specified persons or a list of specified business entities or both, then filers reporting exchanges pursuant to this section will be deemed to have knowledge of the names of persons or business entities which are shown on such lists.

Approved by the Commission on October 1, 1975. Concurring: Brosnahan, Lowenstein and Miller. Commisioners Carpenter and Waters were absent.

Daniel H. Lowenstein
Chairman

5/ Section 81004 requires reports to be verified, stating that the filer has used all reasonable diligence in its preparation.