



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

January 24, 2003

Ms. Caren Daniels-Meade
Chief, Political Reform Division
Office of the Secretary of State
1500 11th Street, Room 495
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-02-310**

Dear Ms. Daniels-Meade:

This letter is in response to your request for advice in connection with your duties as a filing officer under the electronic filing provisions of the Political Reform Act (the "Act").¹

QUESTION

Is a lobbying entity required to electronically file its registration documents, Forms 601 – 604, in the next ensuing legislative session in accordance with Government Code section 84605, if it had an electronic filing obligation in the previous legislative session?

CONCLUSION

Under section 84605(g), a lobbying entity must electronically file its registration documents in the next legislative session if it had an electronic filing obligation in the previous legislative session and the entity is continuing its lobbying activities in the next legislative session.

FACTS

It is your understanding that if the lobbying filer hits the \$5,000 mark in one session, then all statements, reports, or other documents covered by Chapter 6 must be filed online or electronically, and that includes registration documents. You understand

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

the statute to mean that once a filer has begun filing electronically, that filer is subject to electronic filing obligations for all subsequent filings. However, some filers have argued that SB 49, Chapter 866 of 1997, in particular section 84605(g), does not necessarily establish such an on-going electronic filing requirement for lobbying entities.

The lobbyist entities in question do want to re-register, but they want to file their registration on paper, as they have done in the past, rather than file electronically. Currently lobbyists must pay an outside vendor to file the registration forms electronically. The Secretary of State's office is planning to make lobbyist registration available online at no charge in the future, but free online registration was not yet available for registration for the 2003-2004 legislative session.

APPLICABLE LAW

Article 6 of the Act requires lobbyists, lobbyist employers and lobbying firms to register and file periodic reports disclosing money spent to influence legislative or administrative action. (Sections 86100-86118.)

1. Lobbyist Registration. The lobbyist registration is the first and most fundamental item of disclosure required by the statutory lobbying disclosure scheme. The lobbyist registration documents include the certification and pictures of the individual lobbyists, the list of the government officials and agencies the lobbyist will be seeking to influence, and the list of the lobbyist's clients.

Lobbying firms and lobbyist employers are required to register with the Secretary of State no later than ten days after qualifying as a lobbying firm or lobbyist employer. (Sections 86100 and 86101.) Individual lobbyists must submit their lobbyist certifications for filing with the Secretary of State as part of the registration of the lobbying firm or lobbyist employer for which the lobbyist works. (Section 86100(a).)

A lobbyist's certification contains a recent photograph of the lobbyist, the name, business address, and phone of the lobbyist, and a statement that the lobbyist understands the \$10 gift limit and prohibitions in sections 86203 and 86205.² (Section 86103.) The lobbyist certification must also state that the lobbyist has completed the lobbyist ethics course within the past 12 months, or will complete the course by June 30 of the following year.

² Section 86203 provides that a lobbyist may not make gifts to a person of more than \$10 per month. Section 86205 states that a lobbyist may not do anything to place any official under personal obligation to the lobbyist; may not deceive any official concerning pending legislation; may not introduce a bill or amendment for the purpose of being hired to secure its passage or defeat; may not attempt to create a fictitious appearance of support or opposition to any proposed legislation; may not represent that the lobbyist can control the action of the official; and may not agree to accept any payment in any way contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.

The lobbyist registration forms include the following:

- 601 - Lobbying Firm Registration Statement
- 602 - Lobbying Firm Activity Authorization
- 603 - Lobbyist Employer or Lobbying Coalition Registration Statement
- 604 - Lobbyist Certification Statement

2. Renewal and Termination of Lobbyist Registration. The renewal of lobbyist registration is geared toward the two-year state legislative cycles. Lobbying firms and lobbyist employers must renew their registration every two years, during the two-month period preceding the start of a new legislative session. Section 86106 provides:

“Each registered lobbying firm and lobbyist employer which will be conducting activities which require registration shall renew its registration by filing photographs of its lobbyists, authorizations, and a registration statement between November 1 and December 31, of each even-numbered year. Each lobbyist shall renew his or her lobbyist certification in connection with the renewal of registration by the lobbyist’s lobbying firm or employer.”

Under the statutory system, lobbyist registration automatically expires at the end of a legislative session, and entities that are going to continue to lobby in the next legislative session must re-register during the November-December period preceding the upcoming legislative session.

In addition, lobbyists, lobbying firms, and registered lobbyist employers that cease all lobbying activity during a legislative session may terminate their reporting obligations by filing a Notice of Termination (Form 606) with the Secretary of State. (Section 86107(a).) The notice of termination must be filed within 20 days of ceasing all lobbying activity.

3. Disclosure of Lobbyist Registration Information. The Secretary of State is required to make the information provided in the lobbyist registrations available to the public within 30 days after filing. (Section 86108.) The Secretary of State also is required to publish the Directory of Lobbyist, Lobbying Firms, and Lobbying Employers, within 140 days after the start of each regular legislative session. (Section 86109.) In addition, the electronic filing provisions, discussed below, mandate that the Secretary of State maintain on the Internet an online version of the Directory of Lobbyist, Lobbying Firms, and Lobbyist Employers, and update the directory weekly. (Section 86109.5.)

4. Electronic Filing. The Online Disclosure Act was passed in 1997, adding sections 84600-84612 to the Act, and mandating electronic filing of campaign and lobbying reports by the year 2000. (Stats. 1997, Ch. 866, SB 49, Karnette.) The Online Disclosure Act was amended by Stats. 1999, Ch. 433, SB 658.

Section 84605 of the Online Disclosure Act provides in part, as follows:

“Beginning on July 1, 2000, and for all applicable reporting periods thereafter, the following persons shall file online or electronically with the Secretary of State:

(a) Any candidate, including appellate court and Supreme Court candidates and officeholders, committee, or other persons who are required, pursuant to Chapter 4 (commencing with Section 84100), to file *statements, reports, or other documents* in connection with a state elective office or state measure, provided that the total cumulative reportable amount of contributions received, expenditures made, loans made, or loans received is fifty thousand dollars (\$50,000) or more. ...

(b) Any general purpose committees, as defined in Section 82027.5, including the general purpose committees of political parties, and small contributor committees, as defined in Section 85203, that cumulatively receive contributions or make expenditures totaling fifty thousand dollars (\$50,000) or more to support or oppose candidates for any elective state office or state measure. ...

(c) Any slate mailer organization with cumulative reportable payments received or made for the purposes of producing slate mailers of fifty thousand dollars (\$50,000) or more. ...

(d) Any lobbyist, lobbying firm, lobbyist employer or other persons required, pursuant to Chapter 6 (commencing with Section 86100), to file *statements, reports, or other documents*, provided that the total amount of any category of reportable payments, expenses, contributions, gifts, or other items is five thousand dollars (\$5,000) or more in a calendar quarter.

¶ . . . ¶

(g) Once a person or entity is required to file online or electronically, subject to subdivision (a), (b), (c), (d), or (f), the person or entity shall be required to file all subsequent *reports* online or electronically.” (Emphasis added.)

The question presented is whether a lobbying entity must electronically file its registration documents in the next legislative session under section 84605, if it had an electronic filing obligation in the previous legislative session and the entity is continuing its lobbying activities. Your office believes that such lobbying entities are required to file their registration documents electronically. However, some lobbyist filers are asserting that they do not have to file the registration documents electronically. They contend that section 84605 does not establish an ongoing electronic filing requirement for lobbyists, because section 84605(g) just requires that subsequent “reports” be filed online, and because the lobbyist registrations automatically expire every two years.

ANALYSIS

1. Statutory Construction. The ongoing obligation to file electronically in section 84605(g) must be interpreted in light of the entire statutory scheme for electronic filing and lobbying disclosure. Sutherland on Statutory Construction provides as follows with respect to interpreting a statute as a whole:

“A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. Thus, it is not proper to confine interpretation to the one section to be construed. It has also been held that the court will not only consider the particular statute in question, but also the entire legislative scheme of which it is a part.” [Footnotes omitted.] (Sutherland Statutory Construction § 46:05, 6th Ed. Vol. 2A, p. 154.)

The purpose of the electronic filing statute is to provide the public with online disclosure of campaign and lobbying activity by state candidates, committees and lobbyists. The requirement that an entity disclose its activity electronically is triggered when the entity exceeds certain dollar thresholds of activity. The dollar thresholds ensure that candidates, committees, or lobbyists with minimal activity are not required to incur the expense or trouble of filing electronically.

Section 84605(g), which imposes the ongoing electronic filing obligation, uses the term “reports,” instead of the broader phrase “statements, reports, or other documents” used in sections 84605(a) and (d). However, we do not interpret the use of the term “reports” in section 84605(g) to mean that the lobbyist registration forms are excluded from the continuing electronic filing obligation of lobbying entities. The lobbyist registration forms are officially called “statements” or “authorizations,” rather than reports. (Forms 601-604 are titled the Lobbying Firm Registration Statement, Lobbying Firm Activity Authorization, Lobbyist Employer or Lobbying Coalition Registration Statement, and Lobbyist Certification Statement.) However, most all of the required filings under the campaign provisions of the Act are also officially titled “statements” rather than “reports,” and there is no argument that a committee that has reached the electronic filing threshold is not under a continuing obligation to file its campaign statements electronically.

Further, the terms “reports” and “statements” are used interchangeably throughout the Act. We interpret the term “reports” as used in section 84605(g) to be a summary reference to the forms required to be filed electronically under the Act, as specified in sections 84605(a)-(d). Construing section 84605 as a whole, we do not interpret the use of the term “reports” in subdivision (g) to exclude lobbyist registration statements from the requirement of ongoing electronic filing.

Finally, the fact that lobbyist registration expires automatically every two years, and must be renewed by those who are continuing to lobby, does not argue against an ongoing electronic filing obligation for lobbying entities that are continuing their lobbying activities without break or cessation from one session to the next. Lobbying entities that are continuing their lobbying activities routinely re-register during the November-December period preceding the new legislative session as required by the statute. However, they are not “re-qualifying” as lobbyists under section 82039, they are merely updating their registration. Re-registration provides lobbyists with a chance to update their client list and the list of officials whom they will be lobbying in the coming session.³

2. Legislative History. The legislative history of the Online Disclosure Act (SB 49) does not address the specific question at hand concerning lobbyist registration forms. It speaks more generally. However, there is never any discussion in the legislative history that lobbyist registration forms be excluded from an ongoing electronic filing obligation, and there is some indication that they are included.

The Assembly Committee Report on SB 49 prepared for a hearing on July 14, 1997, and the Senate Committee Report on the bill prepared for a hearing on April 16, 1997, both contained the following comments:

“According to the author, providing easy public access to campaign and lobbying reports over the Internet is an idea whose time has arrived. For too long, California has relied on an antiquated system of paper filings that makes it difficult for the average person to find out who is giving money to their elected officials. This bill will bring California’s campaign and lobbying reporting into the 21st century.”

With respect to lobbying disclosure, the Assembly and Senate reports both state that SB 49 “[r]equires implementation of an on-line disclosure program by SOS with the following participants: [candidates, committees] ... [l]obbyists, lobbyist employers, and lobbying firms who have reportable payments, expenses, contributions, or gifts of \$100,000 or more in a calendar quarter.” The reports note that starting July 1, 2000, the online filing threshold for lobbyists falls to \$5,000 in a calendar quarter. Comments to the Assembly and Senate reports discuss the cost of software for electronic filing, noting that SB 49 did not require the Secretary of State to provide free software to filers, and stating that the lack of free software was especially a concern to the lobbying community.

In 1995, the Secretary of State’s office produced a study titled “Electronic Filing: A New Era in Campaign and Lobbying Financial Disclosure.” This study was the genesis of the electronic filing system. The study was mandated by legislation (Stats.

³ This is distinct from major donor reporting. Major donors only qualify as a committee under section 82013(c) and have reporting obligations if they give \$10,000 or more in a calendar year to candidates or committees. Accordingly, the electronic filing obligations of major donors arise separately from year to year, depending on whether they contribute \$10,000 or more that year.

1994, Ch. 1136, AB 3575, Speier), and authored by a panel including the FPPC, elections officials, lobbyists, campaign treasurers, computer consultants and public interest groups.

In the study, “[t]he panel concluded that the Secretary of State should sponsor legislation in 1996 calling for a phased-in electronic filing program that would result in all state-level candidates and campaign committees and lobbying entities filing electronically by the year 2000.” (Page 3.) “If the proposed legislation is enacted, the intent of the Legislature, as expressed in AB 3575, would be achieved. Anyone with a computer or access to a computer – in their homes, places of work, schools, libraries, elections offices – would have at their fingertips the latest, most up-to-date campaign and lobbying financial information. And the voters’ intent, as expressed in 1974’s Proposition 9, would be fully realized.” (Page 4.)

With respect to lobbying, “[t]he Panel agreed that filings by lobbyists, lobbying firms and lobbyist employers should be transmitted electronically, but the requirement should be phased in over two legislative sessions. Electronic filing would be voluntary during the 1997-98 session, and mandatory for the 1999-2000 session.” (Page 13.)

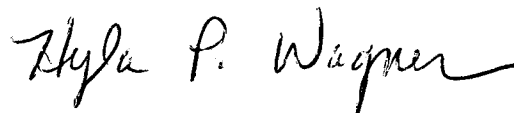
For project scope and cost estimates, the report contained a compendium of campaign and lobbying forms filed with the Secretary of State and data on the volume of each of the forms filed with the Secretary of State. The lobbying registration forms 601-604 were specifically included in the list of forms and in the statistical analysis of the number of forms filed with the Secretary of State. (Appendices B-9 and C-3.)

3. Conclusion. Thus, the legislative history gives no indication that lobbyist registration forms should be excluded from a continuing electronic filing obligation. Interpreting section 84605, we conclude that a lobbying entity that had an electronic filing obligation in the previous session and is re-registering for the next session must file its registration documents electronically under section 84605.

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division