

AIR POLITICAL PRACTICES COMMISSION

100 K Street
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Tel. 322-5660

January 7, 1976



76-234

Mr. Joseph Martin, Jr.
Pettit, Evers and Martin
The Transamerica Building
600 Montgomery Street, 21st Flr.
San Francisco CA 94111

Re: Request for Opinion
No. 75-219

Dear Mr. Martin:

Thank you for your letter of December 18, 1975, requesting an opinion concerning the applicability of the lobbying provisions of the Political Reform Act to you and two other attorneys with your firm. Because your letter raises no substantial question involving an interpretation of the Act, no formal opinion will be issued. However, I hope the following informal comments will be helpful.

Assuming that the action of the Public Utilities Commission (PUC) in establishing priorities among customers and users of electricity is "administrative action" as that term is used in the definition of "lobbyist," Government Code Section 82039, and defined in Government Code Section 82002, you, Mr. Joseph and Ms. Paulus may be "lobbyists" if you meet the time tests set forth in 2 Cal. Adm. Code Section 18239. That regulation characterizes the activities of a witness or counsel before an agency such as the PUC as "public testimony." Section 18239(e)(3). Under the provisions of Section 18239(e)(2)(C) and (D), you are a lobbyist if you spend, in any two consecutive calendar months, 200 hours engaging in public testimony, or 40 hours of public testimony and at least one hour of direct communication which is not public testimony with officials of the PUC. More restrictive provisions apply if you have made gifts of \$10 or more to any PUC official in any one of the preceding six months. See Section 18239(e)(2)(A) and (B).

The term "hours of public testimony" includes the hours spent in preparing written submissions or answers to inquiries if the material becomes part of the records of the PUC proceeding. Time spent by counsel observing the hearing and waiting to participate is includable in "hours of direct testimony." However, if an attorney merely observes the

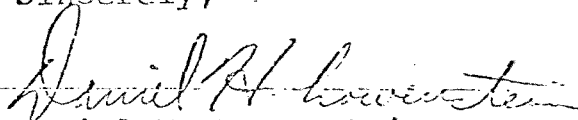
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proceedings and does not participate in any way, the time spent attending the hearing is not includable as "hours of public testimony." In addition, the term does not include travel time and time spent on research which does not become part of the record. 2 Cal. Adm. Code Section 18239 (e) (4).

Even if you and your colleagues are not "lobbyists" by virtue of your activities on behalf of Owens-Corning Fiberglass Corporation, your client may be required to file statements pursuant to Government Code Section 86108(b), as a person who makes payments to influence legislative and administrative action of \$250 or more in any month. See Gov. Code Section 82045(d) and 2 Cal. Adm. Code Section 18621.

For your convenience, copies of applicable regulations are enclosed. If you have any questions, please contact Natalie E. West, a staff attorney.

Sincerely,



Daniel H. Lowenstein
Chairman, for the Commission

DHL:pvp

Attachments

Red 12-18-75
Ref. Bull 1-5-74

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December 18, 1975

76734

Mr. Daniel H. Lowenstein, Chairman
Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

Dear Mr. Lowenstein:

This letter is to request a formal opinion from this Commission regarding the application of the Political Reform Act of 1974 to the representation of a client of this firm by certain attorneys of this firm before the Public Utilities Commission ("PUC"). Inasmuch as the PUC proceeding which is at issue has begun, we respectfully request the Commission to expedite the issuance of that opinion.

On March 11, 1975, the PUC issued an order in Case No. 9884, instituting investigation into the establishment of priorities among the customers and uses of electricity in the State of California. This investigation is being undertaken pursuant to Public Utilities Code §§2771-2776. The PUC recently began hearings in this matter, which are expected to last through January, 1976.

Owens-Corning Fiberglas Corporation has a manufacturing plant in Santa Clara, California, and is interested in presenting testimony of its plant manager in the hearings in PUC Case No. 9884. Owens-Corning has retained this law firm to assist it in preparing that testimony and to attend selected sessions of the hearings in that case. Allan J. Joseph, Susan L. Paulus and myself are the attorneys in this firm who will be working on this matter.

The question presented for this Commission's

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review and opinion is:

Are the members of this law firm named above, who will be representing Owens-Corning in PUC Case No. 9884, but who will not themselves be testifying in that case, lobbyists within the meaning of Government Code §82039?

Inasmuch as the testimony on behalf of Owens-Corning will be presented on January 13, 1976, we respectfully urge the Commission to expedite this request and issue an opinion as soon as possible.

Respectfully,

Joseph Martin, Jr.

Joseph Martin, Jr.

JMJr/de