

FAIR POLITICAL PRACTICES COMMISSION
1100 K Street
Sacramento 95814
(916) 322-5660

January 2, 1976



Mr. Michael Kantor
of Manatt, Phelps & Rothenberg
1888 Century Park East, 21st Flr.
Los Angeles CA 90067

76-235

Dear Mickey:

Thank you for your letter of December 9, 1975, requesting informal advice with regard to your legal representation of Eli Lilly Company. You asked whether formulation and adoption of the proposed Volume Purchase Plan comes within the definition of "administrative action" set forth in Gov. Code Section 82002.

As you indicated in your letter, the Plan would be experimental and the Department of Health does not contemplate the adoption of any rule or regulation to implement the proposed program. While these factors indicate that development of the program is not a "quasi-legislative proceeding" and, therefore, not administrative action, there are other facts which indicate that adoption of the program may, in fact, be administrative action. The pilot program would substantially alter the procedure by which the drugs are supplied to Medi-Cal patients in California by regulating the purchase and distribution of approximately 75 different drugs for a period of at least one year. On balance, I believe that formulation of the plan may be the development of a standard of general applicability, and, as such, is administrative action within the meaning of the Political Reform Act.

Because the question is a close one, I am unable to answer your question definitively. Instead, I suggest that you consider the activities of the Department of Health to be administrative action, and register as a lobbyist if appropriate. Even if you are not a lobbyist by virtue of your activities on behalf of Eli Lilly Company, your client may be required to file monthly statements in accordance with Section 86108(b).

You may, if you wish, submit a formal opinion request regarding this matter for consideration by the entire Commission.

Sincerely,

Daniel H. Lowenstein
Chairman, for the Commission

DHL:pvp

Memorandum

To : STAFF

Date : December 23, 1975

From : FAIR POLITICAL PRACTICES COMMISSION
Natalie E. West

Subject: Letter from M. Kantor, Manatt, Phelps & Rothenberg concerning Lilly Company and the Volume Purchase Plan

I obtained the following additional information:

There is no express statutory authorization for the Volume Purchase Plan. The state argues that California's responsibility for implementing the Medi-Cal program inherently provides for such a program.

No rules or regulations will be adopted because the program will be a research and demonstration program, and Kantor says you don't need regulations for such a pilot program. When implemented, GSA will let bids for about 75 drugs, and each winning drug company will supply quantities of that drug for all Medi-Cal patients in California.

Kantor comes to Sacramento to discuss the issues involved in the plan. It's impossible to segregate which of his time is spent on issues that might be litigated and which time is limited to agency action.

1. Is development of the VPP a "quasi-legislative procedure?"
2. Is it a "proceeding?"
3. If a proceeding, is it a proceeding at which action is taken involving the purchase or sale of property by such agency? at which an action is taken awarding a grant or contract? (18202)

We will discuss this at a mutually advantageous time.

NEW:plh

REC'D 12/15/75
RESPS. DUE 12/29/75

MANATT, PHELPS & ROTHE

ATTORNEYS AT LAW
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FOR CONSIDERATION AT
OPINION REQUEST MEETING

CHARLES T. MANATT
THOMAS D. PHELPS
ALAN I. ROTHENBERG
MARSHALL MANLEY
JOHN GAIMS
BARNET REITNER
BRIAN J. O'NEILL
FRANK G. KER
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TERRY S. KAPLAN
PHILIP J. TOELKES
MARTIN M. JELENKO
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RICHARD D. WILLIAMS
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GORDON M. BAVA
MARC EPSTEIN
RICHARD LEE AUGUST
SANFORD ALAN ROSEN

December 9, 1975

The Honorable Daniel H. Lowenstein
Chairman
Fair Political Practices Commission
926 "J" Street, Suite 522
Sacramento, California 95814

Dear Chairman Lowenstein:

I am writing you to obtain an informal advice and I am not requesting a formal opinion with regard to our legal representation of the Eli Lilly Company ("Lilly") of Indianapolis, Indiana. We have been retained by Lilly to represent the company with regard to a proposed plan now being discussed by the California Department of Health. This plan, known as the Volume Purchase Plan ("VPP") would, if implemented, allow the State of California to purchase various drugs, in bulk, and control the distribution of virtually all drugs utilized by eligible medical recipients in California. At this time the Department of Health is only contemplating a pilot project. Later, the Department may implement a full program. There is no indication, at this time, whether or not regulations or legislation are necessary or contemplated in this connection.

Lilly has been requested by the Department to join in informal discussions which have, as their central theme, the feasibility of such a program. This law firm is representing Lilly in these discussions. In addition, we have discussed with our client the various legal ramifications and courses of action Lilly or others might take in connection with this program.

As you know the term "lobbyist" in Section 82039 is defined as "any person who is employed or contracts for economic

MANATT, PHELPS & ROTHENBERG

The Honorable Daniel H. Lowenstein
December 9, 1975
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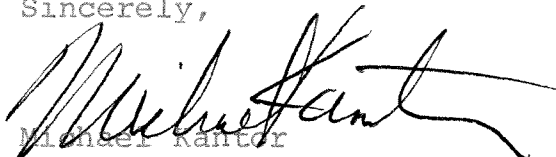
consideration . . . to communicate directly . . . with any . . . agency official . . . for the purpose of influencing . . . administrative action . . ." "Administrative Action" is defined in Section 82002 as [T]he proposal, drafting, development, consideration, amendment, enactment or defeat by any state agency of any rule, regulation, or other action in any rate-making proceeding or any quasi-legislative proceeding . . ."

The present configuration of the VPP and the pilot program is such that it does not involve the consideration, promulgation, or any other action concerning any rule or regulation. In fact the Attorney General has opined that the implementation of the program is consistent with the underlying legislation and the Department, as indicated above, does not contemplate the issuance of any rule or regulation. In addition this law firm's responsibilities involve the protection of an individual client and the effect of this action individually on the client. In that connection, as we have said, litigation has been discussed and is a possibility.

It is our opinion, therefore, that this action by the Department of Health does not come within the definition under the Act of "Administrative Action". Therefore, our representation in this connection is not covered under the Fair Political Practices Act.

Thank you for your consideration.

Sincerely,



Michael Kantor
of Manatt, Phelps & Rothenberg

MK:bvm