

State of California



Fair Political Practices Commission

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April 21, 1977

Robert W. Naylor
Pillsbury, Madison & Sutro
P.O. Box 7880
San Francisco, CA 94120

A-77-368

Dear Mr. Naylor:

John Greenwood has asked me to respond to your letter of March 16, 1977, concerning reporting pursuant to 2 Cal. Adm. Code Sections 18620 and 18621. You initially posed two questions pertaining to employees who spend less than ten percent of their time in any one month influencing legislative or administrative action. In particular, you have asked:

Must the employer report the subject matter and agency which any such employee is attempting to influence?

Must the filer report expenses incurred as the result of activities of employees who are under the 10 percent threshold?

In response to your first question, it is the staff's view that the employer is not required to disclose information concerning the subject matter and agency influenced by an employee who spends less than ten percent of his time in any one month attempting to influence legislative or administrative action. With respect to your second question, additional expenses which constitute payments to influence legislative or administrative action within the meaning of Gov. Code Section 82045 should be reported, even if the employee's salary is not reportable. However, regular ongoing overhead expenses which would be incurred in reasonably similar amounts regardless of the employee's influencing activities need not be reported.

In 2 Cal. Adm. Section 18620(a)(2)(D), the Commission excluded from reporting by a lobbyist employer regular, ongoing overhead expenses which will continue to be incurred in reasonably similar amounts regardless of a lobbyist's activities. Although not explicitly stated, it is the staff's view that the same exemption applies to ongoing overhead expenses incurred in support of other employees. The difficulty of calculating and apportioning such costs is the same whether the individual engaging in influencing activities is a lobbyist

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or another employee and this difficulty outweighs any benefit served by disclosure. On the other hand, additional costs incurred because an employee has influenced or attempted to influence legislative or administrative action are not as difficult to calculate. In addition, these costs clearly would seem to be reportable pursuant to 2 Cal. Adm. Code Sections 18620(a)(6) and 18621(a)(5). Accordingly, additional expenses should be reported, even when the additional expenses support the activities of an employee whose salary is not includable as a payment to influence.

In response to your supplemental third question, the staff agrees with your conclusion that an employee's salary must be allocated and reported if all of the employee's reportable activities, when aggregated, amount to ten percent or more of the employee's compensated time. The regulations do not establish a rule whereby each category of reportable activity must amount to ten percent of the employee's compensated time before a reporting obligation is incurred.

In subsequent telephone conversations, you also asked what agencies must be listed in order to comply with Section 86109(g) when an employee spends ten percent or more of his time in any one month influencing legislative or administrative action. Section 86109(g) requires filers to provide "a specific description of legislative or administrative action which the person making the report has attempted to influence." Admittedly, it is difficult to formulate a precise standard regarding when information should be disclosed pursuant to this subsection. However, the staff thinks that in general a description of legislative or administrative action influenced should be provided whenever the employee engages in more than a de minimus effort with respect to the legislative or administrative action in question. For example, disclosure should be made if an employee testifies before an agency or prepares and submits a written communication as part of an attempt to influence an agency. On the other hand, a filer need not disclose pursuant to Section 86109(g) based on isolated and insubstantial contacts with an agency, such as a single, abbreviated telephone conversation with an agency official. If you have specific questions that represent gradations between these extremes, I suggest that you contact the staff for guidance.

I hope this advice will be of assistance.

Sincerely,
Natalie E. West
Staff Counsel


By: Kenneth Finney

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March 16, 1977

Mr. John C. Greenwood
Fair Political Practices Commission
1100 K Street
Sacramento, CA 95814

Dear Mr. Greenwood:

This letter is in response to your request in our telephone conversation of March 11, 1977, for a written statement of our questions concerning the reporting obligations of lobbyist employers and 86108(b) filers under certain circumstances.

Under section 18620(a)(2)(C), (4) and (5) and section 18621(a)(1), (3) and (4) of Title 2 of the California Administrative Code, the gross compensation paid to an employee engaging in reportable activities need not be allocated or reported by the filer if the employee in any one month spends less than 10 per cent of compensated time engaging in such activities.

As I understood the purpose and intent of the 10-per cent threshold, it was to reduce the administrative burden for filers in keeping track of employee activities where those activities, although involving the influencing of legislative or administrative action, amounted to only a negligible portion of any employee's total compensated time. Under the regulations, an employer would have to keep time sheets and make salary allocations only for those employees whose responsibilities were in some major way devoted to lobbying. The adoption of the 10-per cent threshold, in my opinion, was one of the most significant steps taken by the Commission in making the reporting obligations of section 86108 filers administratively manageable.

The two questions I raised in our conversation pertained to the employer's obligation to report nonsalary items which arise from the activities of employees who are under the 10-per cent threshold in a given month. Specifically:

1. Must the employer report the subject matter and agency which any such employee is attempting to influence? I recall last year receiving advice by telephone from Natalie West to the effect that such information need not be reported when the employee spends less than 10-per cent of his time on reportable activities. I would urge the Commission formally to adopt this position. It is of little or no avail to allow the exclusion of an employee's salary from the report but to require the inclusion of the subject matter of his contacts. An employer would have no choice but to require the employee to maintain a log of his contacts with state government, even if only a single telephone call a month, since any such contact could require an additional entry on the employer's report.

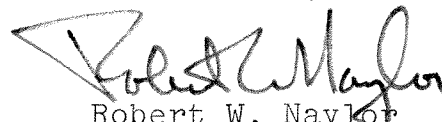
2. Must the filer report expenses incurred as the result of activities of employees who are under the 10 per cent threshold? Examples of such expenses would be travel expenses incurred by an employee who travels once a year to Sacramento to testify before an agency or legislative body and duplicating expenses for the copies of his testimony he distributes to the officials. Again, little administrative burden is saved by excluding the allocable salary for such testimony from the report of the employer but including other incidental expenses incurred as a result of such testimony.

In reviewing sections 18620 and 18621 of the regulations, I have recalled a third question which you may wish to address in the course of any revisions: May an employee spend up to 10 per cent of his time on each category of reportable activity before his salary must be allocated or reported by his employer, or must his salary be allocated or reported when all of his reportable activities in the aggregate amount to 10 per cent or more of his compensated time? The present regulation read literally would not seem to require salary to be allocated or reported so long as no single category of reportable activity (lobbying support, communicating, urging others to communicate) exceeded 10 per cent of an employee's compensated time. On the assumption

that this was not the intent, we have been advising that reportable activities be aggregated for purposes of determining whether employees exceed the 10-per cent threshold.

The answers to the foregoing questions will assist us in advising a number of clients, as well as in preparing our own Form 650, in which we regularly confront these issues. If you require any further information in order to answer these questions, please let me know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert W. Naylor". The signature is written in a cursive style with a large, stylized initial "R".

Robert W. Naylor
for

Pillsbury, Madison & Sutro