86202

78-01-112

January 20, 1978

Mr. J. L. (Jim) Evans
State Legislative Director
United Transportation Union
921 11th Street, Suite 502
Sacramento, California 95814

Dear Mr. Evans:

This letter is in response to your letters dated December 15, and 19, 1977, and a telephone conversation with a member of your staff regarding the lobbying provisions of the Political Reform Act.

In your letter of December 15, you requested advice regarding the reporting of meals as personal maintenance expenses by lobbyists who do not spend all of their compensated time in lobbying related activities. The Fair Political Practices Commission has adopted an administrative regulation (2 Cal Adm. Code Section 18615, a copy of which is enclosed) which prescribes required recordkeeping and reporting for lobbyists. Subsection (a)(1)(B)(2) of this regulation requires a lobbyist who has designated a ledger account to record in the expenditures journal "...[expenditures] wholly or partially in connection with his activities as a lobbyist. Expenditures partially in connection with lobbying activity may be allocated by any reasonable accounting method, which method shall be described in each periodic report ..." Therefore, lobbyists who devote only a portion of their time to lobbying related activities are required to allocate and report a portion of those expenses, such as meals, which may in part be attributable to their lobbying activities.

The Commission's regulation does not prescribe any specific method for allocating these expenses, it requires only that a reasonable accounting method be used. Personal maintenance expenses which are reimbursed by the lobbyist's employer or for which per diem is received from the lobbyist's employer are presumed to be for business purposes. If those expenses are incurred in whole or in part in connection with lobbying activities a portion of those expenses should be allocated and reported. Similarly, if a portion of the lobbyist's salary is paid with the express or implied understanding that disbursements in support of the lobbying activity will be paid from it, then a portion of those expenses, to the extent they relate to the lobbying activities, should be allocated and reported.

24

The following statements are in response to the specific questions posed in your letter of December 15:

1a) Meals and other personnal maintenance expenses incurred by a lobbyist which are entirely unrelated to the individual's lobbying activities do not have to be allocated and reported as lobbying expenses, even though they are reimbursed by the lobbyist employer while the Legislature is in session. However, if all or a portion of any reimbursed expenses can be attributed to the lobbying effort, then all or a portion of the expense should be reported as a lobbying expense, whether or not the Legislature is in session. An example of a reportable allocated personal maintenance expense is the purchase of lunch by a lobbyist, who is reimbursed by the lobbyist's employer, on a day when both lobbying and non-lobbying work is performed.

1b) Meals and other personal maintenance expenses, which are not reimbursed by the employer, but are incurred by a lobbyist are not reportable as lobbying expenses, unless it is understood that they will be paid from the lobbyist's salary.

1c) This question is answered above.

2a) The lobbyist, in this example, should allocate, using a reasonable accounting method and report a portion of the reimbursed expenses incurred in connection with this trip. One possible method would be to determine a ratio by comparing the time spent on lobbying activities with the total hours worked while on the trip.

2b) This question is answered by 2a above.

2c) The lobbyist employer, in this example, should allocate, based on the reasonable accounting method, and report a portion of the reimbursed expenses, such as travel and lunch, which were incurred by the non-lobbyist member as payments to influence legislative or administrative action.

In your letter of December 19, you requested advice concerning Government Code Section 86202 which prohibits lobbyists from making, arranging for, or acting as a intermediary or agent in the making of, campaign contributions to state candidates, elected state officers and their supporting committees. Specifically, you have inquired whether a lobbyist may make an unsolicited recommendation, including specification of an amount, to his or her employer regarding which state candidates or officers should receive campaign contributions. In view of the Court of Appeal's decision in Institute of Governmental Advocates v. Younger, 70 Cal. App. 3d 878 (1977), a lobbyist's unsolicited recommendations, including

specification of an amount, to his or her employer would not be in violation of Section 86202. However, the action of passing along requests for contributions to the lobbyist's employer would be prohibited when the requests are received from state candidates elected state officers, or the candidate's staff and friends, and/or representatives of committees which support state candidates or elected state officers.

Finally, a member of your staff has inquired whether a California Public Utilities Commission proceeding, initiated by Southern Pacific Railroad, regarding the abandonment of a passenger rail line in the San Francisco Bay Area is an administrative action, within the meaning of Government Code Section 82002, which must be reported by a lobbyist. Administrative action concerns activity by a state agency in any rate-making or quasi-legislative proceeding. Since the proceeding you described is not rate-making, a determination must be made as to whether the action before the Public Utilities Commission is a quasi-legislative proceeding.

Initially it should be stated that the proceeding regarding abandonment of rail lines does not come within any of the proceedings which the Fair Political Practices Commission excluded from the definition of quasi-legislative proceedings in its regulation, 2 Cal Adm. Code Section 18202. In the opinion requested by Carl Leonard, 2 FPPC Opinions 54-60 (No. 75-042, April 22, 1976), (a copy of which is enclosed) the Fair Political Practices Commission used two considerations in determining whether a proceeding is quasi-legislative. Those considerations are first, the declaration of a policy and the implementation of means for its accomplishment and secondly, the orientation towards future events.

Applying those considerations to the proceeding you described, the decision by the Public Utilities Commission will be a declaration of public purpose which is oriented towards the future. Specifically there either will or will not be passenger rail service in the Bay Area for the commuters (the public purpose) in the future after the Public Utilities proceeding. Therefore the proceeding will be quasi-legislative and must be reported as administrative action influenced by the lobbyist.

If I can be of further assistance, do not hesitate to contact me.

Sincerely,

ALAN HERNDON
Special Compliance Representative

AH:vh

921 11TH STREET
SUITE 502
SACRAMENTO
CALIFORNIA 95814
(916) 441-2051

united transportation union CALIFORNIA STATE LEGISLATIVE BOARD, AFL-CIO

J. L. (Jim) Evans
Director
J. P. Jones
Asst. Director

78112

December 19, 1977

Copy P
Letter

Mr. Alan Herndon
Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804

Dear Mr. Herndon:

As a result of the decision to let stand a ruling by the Los Angeles County Superior Court regarding the FPPC's interpretation of Government Code Section 86202, and subsequent statements by FPPC Legal Division Chief Michael Baker in the FPPC Bulletin (7/29/77) and the Lobbyist Bulletin (12/12/77) that actions such as passing along a request for a contribution from a legislator (sic), delivering a contribution, making a decision to contribute, or raising the money for a contribution would continue to be deemed "unlawful arrangement", there is some uncertainty on my part and that of my employer as to the ramifications of the decision upon subsequent activities of the California State Legislative Board, and lobbyists and their employers generally.

We would first request clarification of the FPPC's interpretation of "recommend" including but not limited to the following points:

1) Whether the lobbyist may volunteer the recommendation or must wait to be asked by his employer.

2) Whether the right to recommend also includes specifying an amount for any contribution which might be considered.

3) What is and is not included in the term "private communication as put forth on page 12 of the court decision.

We would also appreciate a statement expressing the Commission's current interpretation of "arrange" as used in Government Code Section 86202, with special attention to a major point of confusion to us and to others with whom this question has been discussed.

We assume that Mr. Baker's above-mentioned remarks include all state candidates and elected officials. It is still unclear to us, however, what activities may be encompassed in the prohibition against "passing along a request".

...does it, for example, refer merely to requests made to a lobbyist by an official, candidate, or representative of a recognized committee; or does it extend further to include a request or inquiry by the official/candidate's staff or friends, or information gained in general conversation with someone not attached to the official/candidate, but familiar with the fundraising effort?

Should the interpretation of "recommend" cover unsolicited as well as directly requested recommendations to the employer by the lobbyist, there appears to be a strong likelihood that the prohibition against passing along a request for a contribution could come into conflict with the lobbyist's rights as established by the court decision.

For example, if a lobbyist were to make an unsolicited recommendation for a contribution to an event about which the employer had not previously been informed, it might be expected that the lobbyist would relay details of the event as are commonly included in requests for contributions in addition to the recommendation.

In view of Mr. Baker's remarks this could be considered to be unlawful "arrangement". It would seem, however, that the court decision could be construed to protect communication of this nature, and that an FPPC finding of unlawful "arrangement" would therefore be inconsistent with the court ruling.

The procedures adopted by the California State Legislative Board to assure compliance with FPPC regulations may in many instances be far more restrictive than is required. The Board's goal as an imployer of lobbyists and mine in my capacity as a lobbyist are to function effectively within the limits of existing laws and regulations. If our procedures can be simplified within these limits then we would like the opportunity to consider such alternatives where they do exist.

Your prompt response to our specific questions and any related opinions, advice, or other information with which you can provide us would be most appreciated.

Thank you in advance for your attention in this matter.

Sincerely yours,

J. L. Evans

J. L. (Jim) Evans
State Legislative Director

JLE/sl

921 11TH STREET
SUITE 502
SACRAMENTO
CALIFORNIA 95814
(916) 441-2051

united transportation union
CALIFORNIA STATE LEGISLATIVE BOARD, AFL-CIO

J. L. (Jim) Evans
Director
J. P. Jones
Asst. Director

December 15, 1977

Mr. Alan Herndon
Fair Political Practices Commission
Post Office Box 807
Sacramento, California 95804

Dear Mr. Herndon:

After reading a document entitled "Lobbyist Record-keeping and Reporting Requirements Illustrated" which was attached to the December 12, 1977, Lobbyist Bulletin, some questions regarding the adequacy of reporting procedures followed by the California State Legislative Board as a lobbyist employer and Mr. Jones and myself as lobbyists at the direction of auditors from the California Franchise Tax Board have arisen.

We would greatly appreciate written clarification and explicit instructions where appropriate on the following issues to assure that our filings are in complete compliance with FPPC requirements.

Question 1: Must meals and other personal expenses incurred by a lobbyist but not related to lobbying activities be reported as personal maintenance expense
a) when they are reimbursed by the lobbyist employer while the Legislature is in session?
b) when they are not reimbursed by the lobbyist employer while the Legislature is in session?
c) whether or not they are reimbursed by the lobbyist employer when the Legislature is not in session?

Discussion

The example used for purposes of your illustration is one where the lobbyist incurs expenses which are all lobbyist-related, and therefore totally reportable. Mr. Jones as Assistant State Legislative Director and I as State Legislative Director have numerous responsibilities in addition to those related to lobbying the California Legislature, and we incur numerous expenses (both reimbursable and non-reimbursable) in fulfilling these responsibilities whether the Legislature is in session or recess.

Auditors who have reviewed our reporting and record-keeping procedures since Proposition 9 took effect have directed us to report those meals and other expenses which are directly related to lobbying activities, i.e., expenses and/or per diem for attending reportable hearings away

from Sacramento to be reported as personal maintenance under Part 2, Schedule ii, and expenses involving reportable officials under Part 2, Schedule i, of the lobbyist report form.

Where we had previously reported all expenses, we have since followed the direction of the auditors. As a result of your illustration, however, we are now uncertain of the sufficiency of this approach.

Question 2: When expenses are incurred for combined lobbyist and non-lobbyist related activiities how should these expenses and/or reimbursements be reported by the lobbyist and lobbyist employer in the following circumstances?

a) Lobbyist X travels to San Francisco to attend an administrative hearing on a non-reportable subject and stays overnight. Later the next day he travels to San Jose for a special legislative hearing which he attends for three hours. Late that night he returns to Sacramento. He receives reimbursement for Sacramento-San Francisco-San Jose-Sacramento mileage and per diem for two days. What portion of these expenses/reimbursements should be allocated to reportable lobbying activities?

b) Lobbyist X travels to Los Angeles to attend a special legislative hearing and returns the same day. He has a lunch meeting with union members and others on non-lobbyist business. Lobbyist X is reimbursed for plane fare but is not reimbursed for his lunch and receives no per diem. Must his lunch be reported under personal maintenance expenses? What portion of his travel reimbursement should be allocated for lobbyist expense/reimbursement?

c) Non-lobbyist Union Member Z travels from Los Angeles to Sacramento in early morning and returns the same day. During the morning he meets with the State Legislative Director on union business and the meeting extends through lunch. In mid-afternoon Member Z appears on behalf of the Union at the request of the State Legislative Director before an administrative hearing on a reportable subject before returning home. What portion of Member Z's travel reimbursements from the lobbyist employer should be included in the lobbyist employer's report as an expenditure to influence administrative action? Should the State Legislative Director report the cost of Member Z's lunch and if so, where?

I have read the statutes and regulations which might apply in these situations, and have also studied the handbooks prepared by your office to assist lobbyists and their employers in complying with the law.

I have found these sources inconclusive and vague, however, in terms of the issues I have set forth. For that reason please provide me with a clarification rather than a restatement of these various applicable sections of laws and regulations.

Thank you in advance for your prompt response to this inquiry.

Sincerely yours,

J. L. Evans

J. L. (Jim) Evans
State Legislative Director

JLE/sl

cc: Mr. Lynn Fruit, Secretary
California State Legislative Board