

FEB 21 9 01 AM '78

LAW OFFICES OF
MORRISON & FOERSTER
ONE MARKET PLAZA
SPEAR STREET TOWER
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE (415) 777-6000
TELEX 34-0154 CABLE MOFO
TELECOPIER (415) 777-6290

PALMER BROWN MADDEN
SAN FRANCISCO
DIRECT DIAL (415) 777-6309

LOS ANGELES OFFICE
523 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90014
TELEPHONE (213) 626-3800

February 17, 1978

Al Herndon
Fair Political Practices Commission
1100 "K" Street Building
P.O. Box 807
Sacramento, CA 95804

Dear Al:

This is to confirm the various conversations that we have recently had concerning lobbying law.

1. When a trade association retains a law firm to screen state legislation, select legislation of possible interest to the association and draft position papers on this legislation that may be of interest to the association, this time is not reportable as time spent to influence legislative or administrative action because up until this point, the association has not taken a position on the legislation and therefore is not seen as attempting to influence legislative or administrative action. However, once the association decides to take a position on a bill, all of the time from that time forward on is reportable as time spent to influence legislative or administrative action.

2. A typical day for an attorney who may be asked to represent a client at a given hearing may well include driving to Sacramento, meeting with others who are to testify, research and organization of testimony to be given orally, sitting in a hearing room and, finally, testifying. All of this time is reportable as time spent to influence legislative or administrative action. However,

MORRISON & FOERSTER

Al Herndon
February 17, 1978
Page 2

pursuant to Regulation 18239(e)(4), the travel time and the time spent on research does not count towards the "substantial or regular" test. The time that one spends after one has done one's research and begins preparing the actual testimony as well as the time spent testifying is included towards the "substantial or regular" test. Merely sitting in a hearing room would be counted as time spent to influence, but is not counted towards the public testimony time of the "substantial or regular" test. As in all instances when one is considering the "substantial or regular" test, the exception provided by Regulation 18621 for a person to devote less than 10% of their compensated time during any one month is applicable.

3. Members of a bona fide trade association formed exclusively to consider and exert influence on a variety of state legislative and administrative action are not required to report their payments to the association. The association is the body that has the reporting requirements.

4. When Corporation A hires Corporation B to assist Corporation A in Corporation A's attempt to influence legislative or administrative action and when Corporation B has no person who is a lobbyist, Corporation A must report its payments to Corporation B if it is over the \$250 threshold. However, Corporation B has no reporting requirements.

5. The "substantial or regular" test discussed in Regulation §§ 18239(e)(2)(A) and (B) provides that

"Hours of public testimony are non-includable for the purposes of this paragraph by any person unless that person has, during that month or in any one of the preceding six months made or arranged for the making of a gift of \$10.00 or more to any legislative official or official of an agency before whom that person appears as counsel or as a witness."

We discussed Regulation 18630 which provides that gifts of hospitality in certain instances are not considered gifts by lobbyists for the purposes of the Political Reform Act of 1974. This Regulation, Section 18630, on its face applies only to

MORRISON & FOERSTER

Al Herndon
February 17, 1978
Page 3

lobbyists, but you informed me that it is the view of the Commission that so long as the terms of the Regulations are applied the same terms would be applicable under Section 18239(e).

6. We discussed what reporting obligation a person has when a report that was prepared for purposes other than influencing legislative or administrative action is subsequently submitted as part of an individual's testimony before an agency. We agreed that if the report had been prepared as part of the individual's testimony, the time devoted to the report was reportable under Regulation 18239(e)(3)(B). However, considering that the report had been prepared for purposes other than the testimony and considering the practical problem of reconstructing the time devoted to the report, that the time spent preparing the report would not be reportable. Once it has been decided to use the report, then, of course, any time spent on the report or reviewing it to prepare the testimony, is reportable.

If I have incorrectly set forth your views on any of these matters, please let me know.

Very truly yours,



Palmer Brown Madden
for
MORRISON & FOERSTER

PBM/clb

78289

MAR 6 5 25 AM '78

LAW OFFICES OF
MORRISON & FOERSTER
ONE MARKET PLAZA
SPEAR STREET TOWER
SAN FRANCISCO, CALIFORNIA 94105
TELEPHONE (415) 777-6000
TELEX 34-0154 CABLE MOFO
TELECOPIER (415) 777-6290

PALMER BROWN MADDEN
SAN FRANCISCO
DIRECT DIAL (415) 777-6309

LOS ANGELES OFFICE
523 WEST SIXTH STREET
LOS ANGELES, CALIFORNIA 90014
TELEPHONE (213) 626-3800

March 2, 1978

Al Herndon
Fair Political Practices Commission
1100 "K" Street Building
P.O. Box 807
Sacramento, CA 95814

Dear Al:

This is to confirm our telephone conversation of March 2, 1978 concerning my letter of February 17, 1978.

You informed me that you had reviewed my February 17, 1978 letter and had two comments. Both comments concerned the last sentence at the end of the first paragraph on page 2 which reads, "As in all instances when one is considering the 'substantial or regular' test, the exception provided by Regulation 18621 for a person to devote less than 10% of their compensated time during any one month is applicable."

First you noted that we should be clear that, while it is true that one need not report the time of a person who devotes less than 10% of their time under § 86108, it must be remembered that when one is determining if the person is a lobbyist under Regulation 18239 the 10% exception is not applicable.

Second, you noted that the 10% exception of Regulation 18621 is available to a corporation's employees but not to a third party, such as a law firm, hired by a corporation.

Very truly yours,



Palmer Brown Madden
for
MORRISON & FOERSTER

PBM/clb