

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance/Administration • • • Executive/Legal • • • Enforcement • • • Conflict of Interest
(916) 322-5660 322-5901 322-6441 322-6444

May 5, 1978

Charles Kinney, Counselor
Associated Building Industry
of Northern California
3496 Breakwater Court
Hayward, CA 94545

Re: Opinion Request
No. 77-025

Dear Mr. Kinney:

At its May 2, 1978, meeting, the Fair Political Practices Commission decided to dismiss the opinion request you submitted since it can be answered without reaching the question of whether an industry newsletter comes within the exemption granted in Government Code Section 86300(b)^{1/} to newspapers or periodicals of general circulation. We are providing you with the following informal advice which conforms with the interim oral advice given to you by Barbara Campbell, an attorney in the Legal Division.

The Associated Building Industry of Northern California ("ABI"), a nonprofit trade association representing the residential construction industry and associated concerns, publishes two newsletters. The newsletters, the Progress and the Regional Regulator Review ("Review"),^{2/} are published on a biweekly and monthly basis, respectively. The Review has been published since April of 1976. The Progress has been published since 1974. Progress has a circulation of approximately 1,700 and the Review is distributed to 3,900. Progress is sent to ABI members and nonmember subscribers who constitute approximately 20 percent of the readership. The Review is sent also

^{1/} All further references are to the Government Code.

^{2/} The Review is published under a yearly grant given by the Construction Industry Advancement Fund. ABI administers that grant.

any communication must be reported JEQ 12043 (e)

A-78-325

Charles Kinney, Counselor
May 5, 1978
Page Two

to ABI members and to anyone who contributes to the Construction Industry Advancement Fund. Subscriptions are available for these newsletters upon request by any member of the public. The Progress is available for a \$10 subscription. The Review is available free of charge for up to ten copies.

These newsletters highlight, from the builder's viewpoint, the actions of local, state and federal agencies and courts that affect the residential construction industry. ABI receives press releases and notices of meetings which will be of interest to its membership. Staff monitors the actions and meetings and reports on them in the newsletters. The Progress has a Calendar of Events in each issue informing the readership of forthcoming meetings and hearings. The newsletters on occasion may urge directly or indirectly administrative action by suggesting the readers communicate on a particular issue with agency officials.

Based on these facts, you have asked if the ABI newsletters qualify as periodicals of general circulation to come within the exemption from the lobbying provisions of the Political Reform Act granted in Section 86300(b). Upon review of your request, we have concluded that the costs incurred by ABI in connection with the newsletters will not require the filing of reports under the lobbying provisions of the Political Reform Act. Therefore, it is not necessary to reach the question of whether the newsletters qualify as a periodical of general circulation.

As stated above, ABI sometimes urges the readers of its newsletters to communicate with agency officials. Payments incurred in connection with such communication may be reportable as payments to influence legislative or administrative action. Section 82045(e). If ABI made payments to influence legislative or administrative action totaling \$250 or more in one month, ABI would be required to file a report under Section 86108(b).

However, with specific reference to payments which urge others to communicate with officials, the Commission has provided by regulation that such payments will be reportable if:

Payments [are] made ... for the principal purpose of soliciting or urging other persons

Charles Kinney, Counselor
May 5, 1978
Page Three

to enter into direct communication with elective state officials, legislative officials or agency officials for the purpose of influencing or attempting to influence legislative or administrative action....

2 Cal. Adm. Code Section
18621(a)(4) (emphasis added).

Since the newsletters are not for the principal purpose of soliciting or urging others to enter into direct communication, the payments for the entire newsletter will not be considered payments to influence legislative or administrative action.

However, 2 Cal. Adm. Code Section 18621(a)(5) provides that any payment or portion not described in 18621(a)(4) which would not have been incurred but for soliciting or urging others to communicate will be reportable. Therefore, payments for that portion of ABI's newsletters which urge others to communicate directly will be reportable. However, it is unlikely that the payments attributable to the occasional references in either newsletter which urge others to communicate directly with legislative or agency officials will ever total \$250 or more in a calendar month.

This conclusion is reinforced by the fact that of the three agencies about which you specifically inquired, two are local agencies. (Association of Bay Area Governments and the Bay Area Air Pollution Control District.) Payments to influence administrative action under Section 82045(e) are reportable if the direct communication urged from others is with a state agency official. Section 82004.

You might be interested to know that the Commission is proposing a legislative change in Section 86108(b) to raise the monthly threshold to \$2,500 from \$250 (S.B. 2077). The Commission is also in the process of revising its regulations concerning lobbying disclosure. One of the proposals under consideration includes a newsletter exemption similar to that provided in the campaign disclosure area in 2 Cal. Adm. Code Section 18225(c)(4)(C). That exemption would exclude the reporting of payments for regularly published newsletters sent to members or requestors, unless the newsletter is expanded in frequency of distribution, size, format or circulation.

Charles Kinney, Counselor
May 5, 1978
Page Four

I hope this information is helpful to you. If you have any further questions, please contact Barbara Campbell, an attorney in our Legal Division.

Sincerely,

A handwritten signature in cursive script that reads "Michael Bennett".

Michael Bennett
Executive Director

MB:BC:plh