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# State of California



# Fair Political Practices Commission

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January 31, 1979

A-79-076

Vigo G. Nielsen, Jr.  
 Dobbs and Nielsen  
 The Alcoa Building, Suite 2500  
 One Maritime Plaza  
 San Francisco, CA 94111

Re: Opinion Request  
 No. 79-002

Dear Mr. Nielsen:

Thank you for your letter of January 12, 1979, requesting an opinion regarding the campaign disclosure provisions of the Political Reform Act ("Act"). Since your letter does not raise a substantial question of interpretation under the Act, no formal opinion will be issued. However, I hope the following informal advice provided pursuant to Government Code Section 83114(b)<sup>1/</sup> answers your question.

The facts as I understand them are as follows. Your office represents Lorillard; R. J. Reynolds Tobacco Company; Liggett & Myers Tobacco Company; Philip Morris, Inc.; Brown & Williamson Tobacco Corporation and The Tobacco Institute. All of these entities except Brown & Williamson Tobacco Corporation had employees who spent time opposing the passage of Proposition 5 on the November 7, 1978, ballot, by assisting the campaign efforts of Californians for Common Sense. A question has arisen as to the proper reporting of the salaries for these employees.

A review of the campaign statements filed through October 23, 1978, by the five entities reflects that a total of

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<sup>1/</sup> All statutory references are to the Government Code.

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\$118,071 was spent for salaries of personnel. The breakdown of the \$118,071 is as follows:

The Tobacco Institute..... \$46,598

3/11 - 6/30/78	\$14,678
7/01 - 9/23/78	25,846
9/24 - 10/23/78	6,074
	<u>\$46,598</u>

R. J. Reynolds Tobacco Company..... 10,140

11/23/77 - 3/10/78	\$ 1,500
3/11 - 6/30/78	4,310
7/01 - 9/23/78	2,700
9/24 - 10/23/78	1,630
	<u>\$10,140</u>

Philip Morris, Inc..... 32,158

Inception - 3/10/78	\$ 4,224
3/11 - 6/30/78	13,243
7/01 - 9/23/78	10,310
9/24 - 10/23/78	4,381
	<u>\$32,158</u>

Lorillard..... 22,132

Inception - 3/10/78	\$ 3,150
3/11 - 6/30/78	6,574
7/01 - 9/23/78	11,708
9/24 - 10/23/78	700
	<u>\$22,132</u>

Liggett & Myers Tobacco Company.... 7,043

Inception - 3/10/78	\$ 1,880
3/11 - 6/30/78	4,533
7/01 - 9/23/78	0
9/24 - 10/23/78	630
	<u>\$ 7,043</u>

\$118,071

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With the exception of R. J. Reynolds Tobacco Company, the filers did not disclose any information on their statements' personnel entries other than the notation that the expenditures were for employee salaries. The names of employees paid were omitted. R. J. Reynolds did disclose the number of working days and employees for the salary reported, i.e., on the campaign statement covering the period from 3/11 to 6/30/78, the entry read \$4,310 for salaries for "four individuals for 1-8 days per person."

Campaign statements filed by Californians for Common Sense covering the period through October 23, 1978, reflect numerous non-monetary contributions from the five entities for "salaries, travel expenses (meals, lodging, airfare) of personnel." There is no additional breakdown disclosing the portion of the non-monetary contributions that was for salaries of personnel. There is also no information concerning the amount of salary and names and addresses of the personnel who were included in the non-monetary contributions.

You specifically ask whether the makers of the non-monetary contributions are required, under Section 84210(h), to disclose the names and addresses of the employees whose salaries are non-monetary contributions from the entities to Californians for Common Sense.

As you know, the Fair Political Practices Commission has addressed the issue of an employer's expenditure or contribution for an employee's salary when the employee performs campaign activity during normal working hours. By regulation, 2 Cal. Adm. Code Section 18423, the Commission has required that an employee must spend more than 10 percent of his or her compensated time in a calendar month performing services for political purposes before the employer makes a contribution or expenditure of that employee's time and salary. Therefore, when an employee is allowed to work more than 10 percent of his or her compensated time in a calendar month for and at the behest of Californians for Common Sense, the employer has made a non-monetary contribution to Californians for Common Sense with a value equal to the employee's salary. The employer, as a maker of a non-monetary contribution, is required under Section 84300 to inform the recipient in writing of the value of all in-kind contributions of \$100 or more.

In addition, under Section 84210(h), the employer is required to report, among other things, the full name and street address of each person to whom an expenditure totaling

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\$100 or more has been made and the full name and street address of the person providing the consideration for which any expenditure was made, if different from the payee.

Addressing the situation of non-monetary contributions for services of employees, we concur with the advice given by the Secretary of State's office. The contributor/employer must report the names and addresses of the employees. The employee is providing the consideration for the expenditure and Californians for Common Sense is the payee of the expenditure. This reporting obligation is based on your representation that the employees were assisting the efforts of Californians for Common Sense and, therefore, the employers were not making independent expenditures.

You quite properly point out that this interpretation differs from reporting under Section 84303. If a filer retains an advertising or public relations firm, the individual salaries of the firm's employees do not have to be reported since they are part of the overhead or normal operating expenses. The specific language of Section 84303 excludes detailed reporting of normal operating and overhead expenses. However, if the advertising firm hired someone specifically to work on the campaign, that individual's name and address and his or her salary would have to be reported, since Section 84303 requires that expenditures by the firm, other than for overhead or normal operating expenses, be reported either as if the filer had made them or by the firm itself. In reporting such expenditures either the filer or the advertising firm would be disclosing the information Section 84210(h) requires about the employee.

Your argument that a filer whose subsidiary's employee performed the political services could avoid disclosing the name of the subsidiary's employee ignores the express requirement of Section 84210(h) that both the payee and the person providing consideration be disclosed. Likewise, disclosure of the employee's name cannot be avoided by creating a separate political account since the committee's payments to the filer for personal services would have to be reported as expenditures and the names of the payee and the person providing the consideration be disclosed. Your suggestion that Californians for Common Sense could report the personal services as accrued expenses thereby deleting disclosure of the employees' names by the donor is not acceptable. Californians for Common Sense would have to report the names of the payee and the person providing the consideration for the accrued expense.

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I hope this advice has been helpful. If you wish to appeal the denial of your request for a formal opinion, you may do so pursuant to 2 Cal. Adm. Code Section 18321. If you have any questions regarding this matter, please contact Barbara Campbell, a staff attorney in our Legal Division.

Sincerely,



Michael Bennett  
Executive Director

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