



California Fair Political Practices Commission

July 30, 1986

Ms. Barbara Bennett
Administrative Assistant
California Mining Association
P.O. Box 3
Jackson, CA 95642

Re: Your Request for Advice
Our File No. A-86-209

Dear Ms. Bennett:

Thank you for your request for advice on behalf of the California Mining Association concerning its duties as a lobbyist employer under the disclosure provisions of the Political Reform Act.^{1/}

QUESTION

The California Mining Association is a mutual benefit non-profit corporation organized under Section 7110 of the Corporations Code. Section 86116(f) requires disclosure of the name and title of each officer of a lobbyist employer who engaged in "direct communication" with any elective state official, legislative official, or agency official, when that communication was made for the purpose of influencing legislative or administrative action on behalf of the lobbyist employer. Is a member of the California Mining Association's Board of Directors an "officer" for the purposes of Section 86116(f)?

CONCLUSION

Directors of a mutual benefit non-profit corporation, such as the California Mining Association, are not officers within the meaning of Section 86116(f).

ANALYSIS

The California Mining Association (CMA) has been classified by the Secretary of State as a domestic, non-stock, mutual benefit corporation. It is organized under Section 7110 of the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted.

Ms. Barbara Bennett
July 30, 1986
Page 2

Corporations Code as a non-profit corporation. The CMA is also registered as a "lobbyist employer" with the Secretary of State under Section 86105. As a lobbyist employer, the CMA is subject to the lobbyist employer disclosure provisions of the Act, including Section 86116(f) of the Act, which states:

(f) The name and title of each partner, owner, officer, and employee of the filer (whether or not the individual is a lobbyist) who engaged in direct communication with any elective state official, legislative official, or agency official, for the purpose of influencing legislative or administrative action on behalf of the filer.

(Emphasis added.)

There is no statutory definition in the Act for what constitutes an "officer" as that term is used in Section 86116(f). As Section 86116(f) was only recently enacted (Ch. 1183, Stats. 1985), we have not previously had the opportunity to consider who are "officers" for purposes of that section. The issue is whether the term "officer," as it applies to the CMA and Section 86116(f), is broad enough to include the corporation's board of directors, as well as the officers named in the CMA by-laws (president, vice president, treasurer and secretary), as individuals whose names and titles must be reported if direct communication with designated officials occurs. We feel that it is not.

According to Article IV of the CMA by-laws, the board of directors annually elects the corporation's officers. The board is specifically excluded from CMA's own definition of who is an officer. The by-laws characterize the CMA board of directors as the corporate membership, rather than as the corporate leadership. Article 2 of the December 14, 1961, amendment to CMA's articles of incorporation states:

2. That said corporation [CMA] is and was at all times herein mentioned without any members as such, other than persons constituting its board of directors.

There are no members of the California Mining Association other than the "directors."

The legislative intent behind Section 86116(f) is to account for "direct communication" between an organization's leadership or employees and designated government officials. It was not

Ms. Barbara Bennett
July 30, 1986
Page 3

designed to track the contacts of that organization's membership. It would not be consistent with the purposes of this statute to extend its interpretation to such a broad field. Section 86116(f) lists officers among owners, partners and employees^{2/} as opposed to "members." The grouping of officers with owners, partners, and employees as those who are in authority, or their agents in the organization, tends to favor a narrow interpretation of "officer" as leadership oriented, which would exclude directors, rather than the broader membership-oriented interpretation, which would include directors.

In further support of the interpretation, other statutes in the Act refer to "officers and directors" when the directors are meant to be included rather than simply "officers." See Section 87103(d). If the term "officer" included the directors of an organization, the construction of Section 87103(d) would be redundant. While this alone is not conclusive on the point of whether "directors" are "officers," it yields further insight into the legislative intent of Section 86116(f).

California's mutual benefit non-profit law makes a similar distinction between officers and directors in Section 7113 of the Corporations Code. That section, which defines the officers of a mutual benefit non-profit corporation, does not include the "directors" among the "officers" of a non-profit corporation. It does allow for the inclusion of "such officers with such titles and duties as shall be stated in the by-laws" in addition to the president, vice president, treasurer and secretary. As CMA's by-laws do not include the corporate directors among the "officers," the application of Corporations Code Section 7113 to these facts does not support an interpretation that the directors of the corporation are "officers."

There is little authority to the contrary. According to Cal. Jur., directors are officers in shareholder corporations. 15 Cal. Jur. 3d 238. However, only two turn-of-the-century cases are cited in support of this conclusion. A 1904 case used

^{2/} The reporting of employees has recently been limited by the adoption of 2 Cal. Adm. Code Section 18616.5 (copy enclosed) to those employees who spend 10% or more of their compensated time in lobbying activities and who also engage in direct communication with the specified officials for the purpose of influencing legislative or administrative action on behalf of the lobbyist employer.

Ms. Barbara Bennett
July 30, 1986
Page 4

the phrase "director or other officer," implying that directors are officers. Merriman v. Wickersham, 141 Cal. 567, 75 P. 180. Later, in a 1911 case, the court referred to de facto directors as "officers." Chandler v. Hart, 161 Cal. 405, 119 P. 516. Neither case dealt specifically with this issue and both touched on it only superficially and tangentially. Consequently, they yield only weak authority for the issue being examined here. Furthermore, both cases refer to profit-making corporations, which limits their applicability to these facts.

Finally, the burden to individual lobbyist employers as a result of including directors' "direct communications" among those of the "officers" as opposed to the benefit of this disclosure of their contacts to the general public must be considered. Some non-profit corporations have boards of directors that include many hundreds of people. The burden of monitoring all directors would be substantial. However, the benefit this information yields to the public at large is minimal at best.

Therefore, we conclude that the directors of a non-profit mutual benefit corporation, such as CMA, are not officers for purposes of Section 86116(f). Accordingly, Section 86116(f) requires that the name and title of each officer named in the CMA by-laws must be reported if that officer was engaged in direct communication with an elected state, legislative, or administrative official for purposes of influencing legislative or administrative action on behalf of CMA, but does not require any reporting as to directors of CMA who are not officers.

If you have any questions regarding this letter, please contact me at (916) 322-5901.

Sincerely,



Kathryn E. Donovan
Counsel
Legal Division

KED:DL:km

CALIFORNIA MINING

F P P C
ASSOCIATION

JUN 30 10 42 AM '86

P.O. Box 3 / Jackson, Ca. 95642 / (209) 223-1129

OFFICERS

President
James Good
Vice President
Robert Reveles
Secretary
Ray B. Hunter
Treasurer
Daryl Larsen
Past President
Warren N. Warhol

June 26, 1986

EXECUTIVE COMMITTEE

Wm. Anderson
John Fitz-Gerald
Barry Hillman
John Kirk
Douglas Y. MacIver
A.K. Mueller
John Rains
Gary Vaplon
Morris Worley

Mr. David Lui
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Mr. Lui:

EXECUTIVE DIRECTOR

Ray B. Hunter

In answer to your telephone request of June 25, may I offer the following information.

REGULAR MEMBER COMPANIES

American Perlite Company
Asamera Minerals (U.S.) Inc.
Calaveras Asbestos, Ltd.
California Portland Cement Co.
Excel-Minerals Company Inc.
Featherock/U.S. Pumice Co.
Genstar Cement Co.
Gladding McBean & Co.
Gold Fields Mining Corp.
Grefco Inc.
Homestake Mining Company
Kaiser Cement Corp.
KCAC Inc.
Kerr McGee Chemical Corp.
Manville Products Corp.
Mission Clay Products
Molycorp, Inc.
National Refractories
NL Industries
Noranda Mining Inc.
No. American Refractories
Pacific Clay Products
Pfizer Inc.
Pluess-Stauffer (Calif.) Inc.
Riverside Cement Co.
Santa Fe Mining Corp.
Sonora Mining Corp.
Southwestern Portland Cement
Standard Industrial Minerals
Teledyne Tungsten
Umetco Minerals
U.S. Borax & Chemical Corp.
U.S. Gypsum Co.
Utah International

The California Mining Association was incorporated in 1961 under the name of "California Mine Operators Association". It was organized pursuant to the General Nonprofit Corporation Law of the State of California for the purpose of establishing public relations and publicity programs to inform the public about the problems and opportunities of the California mining industry and the value and importance of that industry; to provide representation at the California State Legislative and Executive offices and at the Federal level; and, to provide California legislators and state administrators with information concerning the affairs and problems of the California mining industry.

"California Mine Operators Association" was reorganized in 1977 and filed with the Secretary of State an amendment to the Articles of Incorporation changing the name of the corporation to "California Mining Association" (CMA).

Each CMA member company appoints one of their company representatives to serve as a director of the Association. The Board of Directors in turn appoints annually the officers (Article IV, CMA By-Laws) and the Executive Committee (Article V, CMA By-Laws). All officers, directors and Executive Committee members serve without compensation.

I trust this information will assist you in making a determination of our reporting requirements and providing me with written clarification. Please call on me if your are in need of anything else.

Sincerely,



Barbara Bennett
Administrative Assistant

cc: James E. Good
Fred Main

CALIFORNIA MINING ASSOCIATION

P.O. Box 3 / Jackson, Ca. 95642 / (209) 223-1129 JUN 23 9 05 AM '86

OFFICERS

President
James Good
Vice President
Robert Reveles
Secretary
Ray B. Hunter
Treasurer
Daryl Larsen
Past President
Warren N. Warhol

June 20, 1986

EXECUTIVE COMMITTEE

Wm. Anderson
John Fitz-Gerald
Barry Hillman
John Kirk
Douglas Y. MacIver
A.K. Mueller
John Rains
Gary Vaplon
Morris Worley

Kathy Donovan
California Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Dear Kathy Donovan:

EXECUTIVE DIRECTOR

Ray B. Hunter

I am requesting clarification of the reporting requirements of "Lobbyist Employers". My interpretation of the requirements is that the name and title of those persons "in direct communication" on behalf of the Lobbyist Employer must be reported on Form 635, and that this requirement pertains to "officers" of Associations that are registered as Lobbyist Employers.

REGULAR MEMBER COMPANIES

In the case of the California Mining Association (CMA) our corporate By-Laws stipulate officers to be President, Vice President, Secretary and Treasurer. These, then, would be subject to reporting requirements. However, in my recent telephone conversation with the Office of Technical Assistance, I was advised that Directors of the Association are also subject to reporting requirements. Directors of the CMA, by definition of our By-Laws, are not considered to be officers.

American Perlite Company
Asamera Minerals (U.S.) Inc.
Calaveras Asbestos, Ltd.
California Portland Cement Co.
Excel-Minerals Company Inc.
Featherock/U.S. Pumice Co.
Genstar Cement Co.
Gladding McBean & Co.
Gold Fields Mining Corp.
Grefco Inc.
Homestake Mining Company
Kaiser Cement Corp.
KCAC Inc.
Kerr McGee Chemical Corp.
Manville Products Corp.
Mission Clay Products
Molycorp, Inc.
National Refractories
NL Industries
Noranda Mining Inc.
No. American Refractories
Pacific Clay Products
Pfizer Inc.
Pluess-Staufner (Calif.) Inc.
Riverside Cement Co.
Santa Fe Mining Corp.
Sonora Mining Corp.
Southwestern Portland Cement
Standard Industrial Minerals
Teledyne Tungsten
Umetco Minerals
U.S. Borax & Chemical Corp.
U.S. Gypsum Co.
Utah International

I would appreciate your clarification of the reporting requirements to ensure that we are in compliance when filing Form 635. Thank you for your assistance.

Sincerely,



Barbara Bennett
Administrative Assistance.

/bb'
enc.

cc: James E. Good



California Fair Political Practices Commission

June 25, 1986

Barbara Bennett
California Mining Association
P.O. Box 3
Jackson, CA 95642

Re: 86-209

Dear Ms. Bennett:

Your letter requesting advice under the Political Reform Act has been received on June 23, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

Kathryn E. Donovan
Counsel
Legal Division

KED:plh