



# California Fair Political Practices Commission

September 8, 1987

Fred Lowell  
Pillsbury, Madison & Sutro  
225 Bush Street  
San Francisco, CA 94120

Re: Your Request for Advice  
Our File No. A-87-212

Dear Mr. Lowell:

You have asked for advice on behalf of the Coalition for Legal Malpractice Insurance Reform (the "Coalition") under the lobbying disclosure provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTIONS

1. Are members of the Coalition lobbyist employers?
2. If the Coalition is a lobbyist employer and its members are not, does the "dues exception" in Regulation 18616(g)(3) apply to members' contributions to the Coalition?
3. If the dues exception does not apply, how should contributors' dues be reported since the portion to be used for lobbying cannot be known until the Coalition expends the funds?

## CONCLUSIONS

1. Members of the Coalition are lobbyist employers.
2. and 3. In view of the result reached in question 1, your second and third questions do not require response.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

### FACTS

The Coalition is a nonprofit mutual benefit corporation organized pursuant to California law (Corporations Code Section 7110 et seq.) and exempt from taxation under Sections 501(a) and 501(c)(6) of the Internal Revenue Code. It has been formed to oppose mandatory malpractice insurance laws, including one currently pending before the California Legislature.

Various interested groups, primarily law firms and professional law corporations, are expected to contribute funds to the Coalition. These funds will be used (1) to pay registered lobbying firms to lobby on behalf of the Coalition, and (2) to pay other Coalition expenses, including legal and accounting fees.

The Coalition's lobbying efforts will seek to influence the Legislature, the State Bar and local bar associations. Your letter indicates that, with respect to local bar associations, the Coalition may encourage formulation of malpractice insurance standards as well as seek to enlist support in opposing compulsory insurance legislation. When we discussed this matter last month, you indicated that the Coalition was formed as a result of legislation presently pending in California and that it would probably disband once this issue is resolved.

### ANALYSIS

The Political Reform Act requires lobbyist employers to file periodic reports disclosing various information concerning their lobbying efforts. (Section 86115, 86116.) The Act provides that:

"Lobbyist employer" means any person, other than a lobbying firm, who:

(a) Employs one or more lobbyists for economic consideration, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action, or

(b) Contracts for the services of a lobbying firm for economic consideration, other than reimbursement for reasonable travel expense, for the purpose of influencing legislative or administrative action.

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To deal with situations involving membership organizations, the Commission has adopted a regulation which provides further guidance in defining "lobbyist employer" in this context. Regulation 18239.5 provides:

When a lobbyist or lobbying firm is employed by a bona fide association, including any bona fide federation, confederation or trade, labor or membership organization, that association is a lobbyist employer. The members of the association are not lobbyist employers under Government Code Section 82039.5 merely because of such membership.

To determine if the Coalition is a lobbyist employer, we must thus decide if the Coalition is a "bona fide association" within the meaning of Regulation 18329.5. Your letter implies that the Coalition is such an association since it is lawfully organized as a California mutual benefit corporation. However, the Commission has addressed this issue in a related context in its Sloan Opinion (1976) 2 FPPC Opinions 105, 108. In Sloan, the Commission stated:

The Coalition was formed for the exclusive purpose of opposing regulations proposed by the State Fire Marshal, and it intends to disband as soon as the dispute over the fire regulations is resolved. We think that the term "bona fide association" means that an organization is ongoing in nature, and does not include a short term coalition that is formed to support or oppose a single group of regulations.

In reaching this result, the Commission noted that the fact that a coalition is not a "bona fide association" within the meaning of its regulations is unrelated to the lawfulness of its purpose. (Sloan Opinion, supra, 2 FPPC Opinions at 108, fn. 3.)

Applying the Sloan test to the Coalition for Legal Malpractice Insurance Reform, it appears that the Coalition is not ongoing in nature. Rather, it is a short-term coalition formed to support or oppose a single piece of legislation or perhaps a small number of similar legislative efforts. Once this effort is concluded, it will disband. Therefore, it does not appear to be a bona fide association within the meaning of the Commission's regulations, and its members would be lobbyist employers.

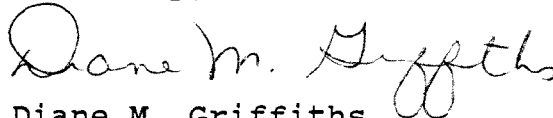
In your letter, you argue that the reporting this result will require is unnecessary and overly burdensome and that the

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statutory definition of lobbyist employer should be interpreted with reference to principles of contract law. I am sympathetic to your arguments, but I believe this result is compelled by Commission precedent in the form of Regulation 18239.5 and the Sloan Opinion. I hope to convince the Commission to take another look at this issue at a Commission meeting in the future.

Since we have concluded that Coalition members are lobbyist employers, we need not address your questions concerning the "dues exception" in Regulation 18616(g)(3). If you have any questions, I may be reached at (916) 322-5901.

Sincerely,



Diane M. Griffiths  
General Counsel

DMG:plh

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July 30, 1987

FEDERAL EXPRESS

Ms. Jeanne Pritchard  
Fair Political Practices Commission  
The Travelers Business Center  
428 J Street - Suite 800  
Sacramento, CA 95814

Dear Jeanne:

Pursuant to our recent conversation, this constitutes a request for written advice pursuant to Government Code § 83114(b).

We are counsel for an organization which has just been established called the "Coalition for Legal Malpractice Insurance Reform" (the "Coalition"). The Coalition is a bona fide nonprofit mutual benefit corporation organized pursuant to California's Nonprofit Mutual Benefit Corporation Law (Corporations Code §§ 7110 through 8910). The Coalition will operate as an organization exempt from taxation under 501(a) and 501(c)(6) of the Internal Revenue Code.

The Coalition has been formed in order to oppose mandatory malpractice insurance schemes, such as the one currently pending before the California Assembly. It is contemplated that various interested groups, primarily law firms and professional law corporations, will contribute funds to the Coalition, which funds will be used to (1) pay registered lobbying firms to lobby on behalf of the Coalition, and (2) pay such expenses, including legal and accounting fees, as the Coalition may incur from time to time in the course of its activities. The Coalition's lobbying activities will center on attempts to influence members of the Legislature as well as attempts to influence the governing boards of the California State Bar and various local bar associations. With respect to the latter, such attempts will be designed not only to enlist the support of bar associations in opposing compulsory malpractice insurance legislation, but also to

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encourage such associations to formulate positions and standards with respect to legal malpractice insurance issues.

Since the Coalition will hire registered lobbying firms to lobby on its behalf, it is our position that the Coalition is a lobbyist employer subject to the appropriate reporting and disclosure obligations imposed by the lobbying disclosure provisions of the Political Reform Act of 1974 (the "Act"). We understand that it is the FPPC's position, however, that because one of the primary purposes of the Coalition is to attempt to influence legislative action in California, the Coalition is not a "lobbyist employer" as defined under the Act. Instead, all of the entities or persons which contribute to the Coalition will become "lobbyist employers" by virtue of such contributions and as such (a) they will incur lobbyist employer disclosure obligations, and (b) they must each file a separate lobbyist employer authorization statement. In other words, the FPPC's position appears to be that the Coalition is nothing more than a conduit through which individual contributors enter into an employer relationship with the lobbying firms to be engaged.

Presumably, the FPPC relies on Government Code § 82039.5 (definition of "lobbyist employer") and § 82045(a) which states that a payment to influence legislative or administrative action includes any direct or indirect payment to a lobbyist by any person employing or contracting for the services of the lobbyist. It is our position, however, that the individual contributors to the Coalition are not persons "employing" or "contracting" for the services of the lobbyist or lobbying firm within the meaning of Government Code § 82039.5 because they have no control over such employment contract. The Coalition is a separate corporation governed by a board of directors and officers who make such decisions in their sole discretion. As a matter of contract law, it appears to us that the lobbying firms employed can look only to the Coalition for payment of their services and not to the contributors thereto.

As a practical matter, it also appears to us that it will serve no useful purpose to require a hundred different contributors to register as lobbyist employers when in fact, they have no control over the lobbyists they have allegedly employed. If it is a concern of the FPPC that the individual contributors to the Coalition will not be identified, then the Coalition would be amenable to attaching to its lobbyist employer reports a list of its contributors. In any case, identification could be made on Form 635, Part V.

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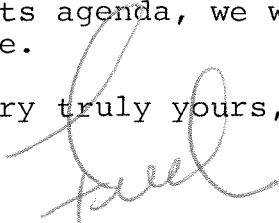
We also pose the following additional questions:

1. In the event that you conclude that the Coalition is a lobbyist employer and that its contributors are not, does the so-called "dues exception" provided in 2 Cal. Administrative Code § 18616(g) (3) apply to the Coalition's contributors?

2. If the dues exception referred to in (1) above does not apply, how should contributors report the portion of their dues used to influence administrative or legislative action since the correct allocation cannot be known until after the Coalition's funds have been expended?

Due to the fact that the Coalition has been established and would like to proceed with its agenda, we would appreciate a response as quickly as possible.

Very truly yours,



Frederick K. Lowell



California  
Fair Political  
Practices Commission

August 4, 1987

Frederick K. Lowell  
Pillsbury, Madison & Sutro  
223 Bush Street, P.O. Box 7880  
San Francisco, CA 94120

Re: 87-212

Dear Mr. Lowell:

Your letter requesting advice under the Political Reform Act was received on July 31, 1987 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 more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, we will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Diane M. Griffiths  
General Counsel

DMG:jaj