



California Fair Political Practices Commission

September 10, 1993

Mr. Kirk Pessner
Nielsen, Merksamer,
Parrinello, Mueller & Naylor
591 Redwood Highway, #4000
Mill Valley, CA 94941

Re: Your Request for Informal Assistance
Our File No. I-93-268

Dear Mr. Pessner:

You have requested advice concerning the lobbying provisions of the Political Reform Act (the "Act").^{1/} Because you have not named a specific person on whose behalf you have requested this advice, we provide the following informal responses to your questions.^{2/}

QUESTION

Do travel time and preparation work undertaken for the purpose of influencing legislative or administrative action count for purposes of determining whether an individual qualifies as a lobbyist under the compensation test in Regulation 18239(b) and whether an entity qualifies as a lobbying firm under Regulation 18238.5(a)?

CONCLUSION

Compensation received by an individual or an entity for travel time and for preparation work undertaken for the purpose of communicating directly with public officials to influence legislative or administrative action is counted when applying the lobbyist or lobbying firm "compensation" qualification tests.

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

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

ANALYSIS

An individual may qualify as a lobbyist if he or she receives compensation, other than reimbursement for reasonable travel expenses, to communicate with public officials for the purpose of influencing legislative or administrative action. (Section 82039.) Regulation 18239 provides a "compensation test" to determine if an individual qualifies as a lobbyist.

(a) A lobbyist is any person who, for compensation, engages in direct communication, other than administrative testimony, with a qualifying official for the purpose of influencing legislative or administrative action, and also meets the requirements of either subsection (b) ...

(b) The person receives or becomes entitled to receive at least \$2,000 in compensation in any calendar month for influencing legislative or administrative action...

"Compensation" is defined in Regulation 18239(d)(2) as follows:

...any economic consideration, other than reimbursement for reasonable travel expenses, i.e., expenses for transportation plus a reasonable sum for food and lodging.

Regulation 18239(d)(3) also defines the term "direct communication" as follows:

...appearing as a witness before, talking to (either by telephone or in person), corresponding with, or answering questions or inquiries from, any qualifying official, either personally or through an agent who acts under one's direct supervision, control or direction. Direct communication does not include any request for or provision of purely technical data or analysis to an administrative agency by a person who does not otherwise engage in direct communication for the purpose of influencing legislative or administrative action.

An entity will qualify as a lobbying firm if it receives \$5,000 or more in compensation in a calendar month, other than reimbursement for reasonable travel expenses, and an individual of the entity engages in direct communication for the purpose of influencing legislative or administrative action. (Section 82038.5 and Regulation 18238.5(a).)

When applying the compensation tests, an individual or entity must count all compensation received for the purpose of engaging in direct communication with an official to influence legislative or administrative action, including compensation received in connection with travel.^{3/} However, reimbursement for travel expenses (i.e., air fare, taxi fare, food and lodging) is not counted.

Similarly, when applying the compensation tests, an individual or entity must count all income received for preparation work undertaken for the purpose of engaging in direct communication to influence legislative or administrative action.^{4/} Preparation work includes activities such as writing correspondence, developing testimony and attending meetings in connection with direct communication. Background studies and research activities undertaken for purposes other than to influence legislative or administrative action are not counted. (Robeck Advice Letter, No. I-92-231.)

Compensation received by an individual or an entity for travel or other activities not provided in connection with "direct communication" is not counted for purposes of qualifying as a lobbyist or lobbying firm. For example, compensation received in connection with travel when an individual is only meeting with his or her client to discuss and confer on legislative or administrative issues need not be counted.^{5/}

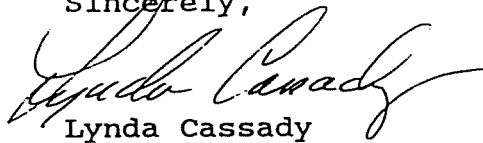
^{3/} Compensation received in connection with administrative testimony is not counted toward the "compensation" qualification tests for a lobbyist or a lobbying firm. (Regulation 18239 and Slaby Advice Letter, No. I-90-692.) Therefore, compensation for travel time that is undertaken for the sole purpose of administrative testimony is not counted.

^{4/} Compensation received for preparation work solely undertaken for administrative testimony is not counted against the "compensation" qualification tests for a lobbyist or lobbying firm. (Regulation 18239 and Slaby Advice Letter, supra.)

^{5/} However, once an individual qualifies as a lobbyist or an entity qualifies as a lobbying firm, all compensation received for travel and preparation time that is for the purpose of influencing legislative or administrative action is reportable even if an individual does not engage in "direct communication".

If you have questions concerning this letter, please contact me at (916) 322-5662.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lynda Cassady".

Lynda Cassady
Assistant Division Chief
Technical Assistance Division