



California Fair Political Practices Commission

December 1, 1993

Chris Micheli
California Manufacturers Association
1121 L Street, Suite 900
Sacramento, CA 95814-3952

Re: Your Request for Informal
Assistance
Our File No. I-93-424

Dear Mr. Micheli:

This letter is in response to your request for confirmation of telephone advice provided to you on behalf of the California Manufacturers Association (the "CMA") regarding the lobbying and travel provisions of the Political Reform Act (the "Act").¹ Since your request seeks general guidance, we are treating your request as one for informal assistance.²

QUESTIONS

1. What are the reporting obligations of the CMA, as a lobbyist employer, in connection with travel, meals, and lodging provided to public officials who are speakers or panel participants at CMA conferences held within the State of California?

2. May a registered lobbyist arrange for the payments of these costs without violating the \$10 gift limit?

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, Sections 18000-18954. 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).)

CONCLUSIONS

1. The CMA would not incur reporting obligations for actual intrastate travel and necessary lodging and subsistence provided to public officials directly in connection with the officials' participation as speakers or panel participants at CMA conferences.

2. A registered lobbyist may, without violating the \$10 gift limit, arrange for the payment of costs for actual intrastate travel, and any necessary lodging and subsistence provided directly in connection with speeches given by public officials at conferences sponsored by the lobbyist's employer and held in California.

FACTS

The facts discussed in our telephone conversation of October 7, 1993, and additional facts provided in your letter dated November 1, 1993, are as follows:

The California Manufacturers Association, a lobbyist employer, annually holds several conferences throughout the state relating to workers' compensation, taxation, energy, and other issues. As part of the conferences, elected officials and legislative, executive, and administrative staff are often invited to speak and/or appear on panels. The invitees are persons with reporting obligations under the Act.

The CMA would like to pay travel expenses and provide food and lodging for the participants, consistent with its practice to provide such payments to all conference participants. Registered lobbyists employed by CMA are often involved in the planning and preparation of these conferences, including inviting attendees and speakers.

ANALYSIS

Public officials are subject to reporting and disqualification requirements concerning gifts.³ Furthermore, elected state officers, members of state boards or commissions, and designated employees of a state agency may not accept any

³ Public officials are required to disclose gifts aggregating \$50 or more in a calendar year, and are subject to disqualification requirements concerning donors of gifts which aggregate \$250 or more. (Sections 87207 and 87103(e).) A "gift" is defined as any payment to the extent that consideration of equal or greater value is not received. (Section 82028(a).)

gifts which aggregate more than \$270⁴ in value from any single source in any calendar year. The officials are also prohibited from accepting any honorarium. (Sections 89502, 89504 and 89505; Regulation 18954.)⁵

The Act defines "honorarium" as any payment⁶ made in consideration for any speech given,⁷ article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89502(b).)

Pursuant to Section 86203, a lobbyist or lobbying firm is prohibited from making, or acting as an agent or intermediary in the making of any gift, or arranging for the making of any gift in excess of \$10 in a calendar month. For purposes of Section 86203, a gift means a gift made directly or indirectly to any state candidate, elected state officer, legislative official, or to any agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of a lobbyist. (Section 86201.) These public officials are also prohibited from knowingly receiving any gift in excess of \$10 in a calendar month from a lobbyist or lobbying firm. (Section 86204.)

The first question you pose is whether a payment made by a lobbyist employer, for travel, meals, and lodging provided to a public official who is listed on the registration statement of the lobbyist employer, is a reportable gift. In particular, you are concerned about situations where a public official makes a speech or is a panel participant at a conference held in California and sponsored by the lobbyist employer.

⁴ This gift limit amount has been adjusted from \$250 to \$270 pursuant to Sections 89504 and 89505. (Regulation 18954.) Certain payments, advances, or reimbursements for travel and related lodging and subsistence made to state public officials may be excluded from the gift limitation amounts. (Regulation 18950.1.) However, such gifts may be reportable unless they are exempt under Regulation 18950.3.

⁵ In addition, there are separate provisions regarding gifts, honoraria, and travel which are applicable to local elected officials. (Section 89501, Regulation 18950.2.)

⁶ "Payment" means a payment, distribution, transfer, loan, advance, deposit, gift, or other rendering of money, property, services or anything else of value, whether tangible or intangible. (Section 82044.)

⁷ Regulation 18931.1 defines "speech given" as a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate.

As a lobbyist employer, CMA is normally required to report expenses paid to public officials who are covered under Section 86201 on a quarterly activity report filed with the California Secretary of State. (Sections 86115 and 86116.) In addition, CMA is required to provide a beneficiary of a gift specified information concerning the gift within 30 days following the end of the calendar quarter in which the gift was provided. (Section 86112.5).

However, Regulation 18950.3 provides:

Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, are not payments and need not be reported by any filer.

(Emphasis added.)

Thus, intrastate travel provided directly in connection with a speech given by a public official is not deemed a gift and is not reportable by any filer, including a lobbyist employer. Thus, the CMA would incur no reporting obligations where the requirements of Regulation 18950.3 are satisfied. This would include payments made for actual travel and meals and beverages provided to an official on the day of the speech or panel presentation. Lodging and subsistence provided directly in connection with a speech is also exempt, but must be limited to "necessary" payments. Whether lodging and subsistence are "necessary" must be determined on a case-by-case basis.

You also ask in your letter whether a registered lobbyist who makes the conference arrangements would be arranging for the making of a gift. As noted earlier, a lobbyist is prohibited from acting as an agent or intermediary in the making of any gift, or to arrange for the making of any gift by any other person. (Section 86203.)

Regulation 18624 further states:

A lobbyist "arranges for the making of a gift" within the meaning of Government Code Section 86203 if the lobbyist, either directly or through an agent, does any of the following:

- (a) Delivers a gift to the recipient.

(b) Acts as the representative of the donor, if the donor is not present at the occasion of a gift. This does not include accompanying the recipient to an event where the donor will be present.

(c) Invites or sends an invitation to an intended recipient regarding the occasion of a gift.

(d) Solicits responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a gift.

(e) Is designated as the representative of the donor to receive responses from an intended recipient concerning his or her attendance or nonattendance at the occasion of a gift.

(f) Acts as an intermediary in connection with the reimbursement of a recipient's expenses.

Also as noted earlier, payments made pursuant to Regulation 18950.3 are not gifts for purposes of any filer. Thus, a registered lobbyist who makes conference arrangements with respect to payments which comply with the requirements of 18950.3 would not be arranging for the making of a gift. However, where payments are made which do constitute gifts to an official, such as lodging which is not necessary for the conference as provided under Regulation 18950.3, a lobbyist would be arranging for the making of a gift unless another exemption applies.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
Counsel, Legal Division