



California Fair Political Practices Commission

May 13, 1994

Mr. James Sutton
Nielsen, Merksamer,
Parrinello, Mueller & Naylor
591 Redwood Highway, #4000
Mill Valley, CA 94991

Re: Your Request for
Confirmation of Telephone
Advice
Our File No. I-94-76

Dear Mr. Sutton:

You have requested confirmation of telephone 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 response to your question.²

QUESTION

Must a public relations firm which receives \$5,000 or more during a calendar quarter to conduct a public relations campaign and which has an employee who makes one contact with a state official register as a lobbying firm, even though the amount of the fee which was received in connection with the contact was less than \$5,000?

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. Sections 18329(c)(3).)

CONCLUSION

Payments which are not related to direct communication to influence legislative or administrative action are not includable in determining whether an entity qualifies as a lobbying firm.

ANALYSIS

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

Regulation 18329 provides that:

..."direct communication" means 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.

When applying the compensation test, all compensation received for the purpose of engaging in direct communication, including compensation received in connection with travel, must be counted.³ However, reimbursement for travel expenses (i.e., air fare, taxi fare, food and lodging) is not counted. (Pessner Advice Letter, No. I-93-268.)

Similarly, all income received for preparation work undertaken for the purpose of engaging in direct communication must be counted.⁴ Preparation work includes activities such as writing correspondence, developing testimony and attending

³ Compensation received in connection with administrative testimony is not counted toward the "compensation" qualification tests for 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 lobbying firm. (Regulation 18239 and Slaby Advice Letter, supra.)

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.)

Payments received for travel or other activities not provided in connection with direct communication are not counted for purposes of qualifying as a lobbying firm. For example, travel payments received to meet with clients to confer on legislative or administrative issues or payments solely for a public relations campaign need not be counted.⁵

If you have additional questions regarding this matter, please contact me at (916) 322-5662.

Sincerely,



Wayne Imberi
Political Reform Consultant

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However, once an entity qualifies as an 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.