



California Fair Political Practices Commission

May 13, 1994

Chris Micheli
Tax & Corporate Counsel
California Manufacturers Association
1121 L Street, Suite 900
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-94-136

Dear Mr. Micheli:

You have requested confirmation of telephone advice provided to you on behalf of the California Manufacturers Association ("CMA") concerning the gift and lobbying disclosure provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. May a registered CMA lobbyist suggest to CMA employees, who are not lobbyists, which legislative officials should be invited to a reception?
2. Explain the gift reporting requirements for a CMA sponsored reception when CMA member companies contribute funds toward the costs of the reception.

CONCLUSIONS

1. A CMA lobbyist may suggest which legislative officials should be invited to a reception. However, a lobbyist may not engage in activities that would result in the "arranging of a gift" as defined in Regulation 18624.
2. If CMA directs and controls which legislative officials will be invited to the event and determines the use of funds for the event, CMA will be the source of the gift to the

^{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.

officials. CMA must report the gifts on its Lobbyist Employer Report (Form 635) and must notify the legislative officials that they have received a gift. If a CMA member contributes funds toward the event but does not meet the requirements of Regulation 18945 to become the source of a gift, the CMA member will not have a reporting requirement.

FACTS

The California Manufacturers Association holds a membership meeting and legislative conference each spring. As part of the legislative conference, a reception is held in order to provide CMA members with the opportunity to interact with legislators and their staff members. CMA usually asks several of its member companies to sponsor different events held in conjunction with this annual meeting (e.g., luncheon, breakfast, reception).

ANALYSIS

Section 86203 prohibits a lobbyist from making or arranging gifts totaling more than \$10 in a calendar month to any elected state officer, state candidate, legislative official, or agency officials of any agency required to be listed on the registration statement of the lobbyist employer of the lobbyist. In Institute of Governmental Advocates (1982) 7 FPPC Ops. 1, copy enclosed, the Commission concluded for purposes of Section 86203 that a lobbyist would not be making or arranging a gift if the lobbyist only recommends to his or her employer which officials should be invited to an employer-sponsored event. Recommendations for action between a lobbyist and his or her employer are protected as free speech. Regulation 18624 provides a list of activities that fall within the meaning of "arranging for the making of a gift" for purposes of Section 86203.

Regulation 18941.1 provides that a free meal provided to a public official at a reception is a gift. To determine if CMA has a reporting obligation, we must determine if CMA, or its members, are the source of a gift. Regulation 18945 states:

...A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.

(1) If a person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials, the person is the source of the gift to the official or officials....

If CMA directs and controls who is invited to the reception and how funds are used, CMA will be the source of the gift to those legislative officials who receive food or beverages at the event, even if a CMA member company pays a vendor for services

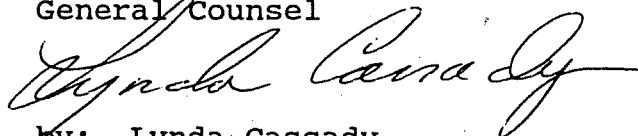
related to the event or provides a direct donation to CMA. However, if a CMA member company makes a payment toward the event and also directs and controls who is invited to the reception, the CMA member will be the source of the gift.

Because CMA is a lobbyist employer and source of the gifts, CMA must determine the pro rata share of the expenses attributable to each official who attends the event (Eichman Advice Letter, No. I-93-430, copy enclosed) and itemize each gift as an activity expense on its Lobbyist Employer Report (Form 635). In addition, a written invitation to an event at which officials will receive reportable gifts must include a statement to that effect. (Section 86112.3.) Furthermore, following the event, CMA must provide each legislative official with the date and amount of each gift and a description of the goods provided. (Section 86112.5.) A CMA member company contributing funds toward the event will incur the same reporting requirements if the member qualifies as a source of the gift under Regulation 18945 and is required to file lobbying disclosure reports. Otherwise, the CMA member company will have no reporting requirements.

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

Sincerely,

Steven G. Churchwell
General Counsel



by: Lynda Cassady
Assistant Division Chief
Technical Assistance Division