

RAVI MEHTA  
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FAIR POLITICAL PRACTICES COMMISSION

January 2, 1996

Robert Leidigh  
Olson, Hagel, Fong, Leidigh,  
Waters and Fishburn  
Plaza Towers  
555 Capitol Mall, Suite 1425  
Sacramento, CA 95814

Re: Your Request for Informal  
Assistance  
Our File No. I-95-357

Dear Mr. Leidigh:

You have requested advice concerning the lobbying disclosure provisions of the Political Reform Act (the "Act").<sup>1</sup> Because you have not identified the person on whose behalf you are writing, we are treating your request as one for informal assistance.<sup>2</sup>

QUESTIONS

1. If a client, who is not a lobbyist employer, makes payments to a law firm for legislative monitoring services and legal services, are such payments required to be reported?

2. Are payments made to a lobbying firm for legislative monitoring services before the lobbying firm was retained and authorized to lobby for the client reportable?

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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 Title 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Gov. Code §83114; 2 Cal. Code Regs. §18329(c)(3).)

3. If a lobbying firm must retroactively report certain payments, what cumulative period should be reflected on the cover page of the client's Form 635?

#### CONCLUSIONS

1. No. Payments made to a law firm which is not a lobbying firm for monitoring legislation and legal services do not have to be reported if the client is not a lobbyist employer. See the analysis below for a discussion on reporting such payments if the client later becomes a lobbyist employer.

2. Yes. Regulation 18614 requires that payments made to a lobbying firm for "legislative-related services" be retroactively reported if, within one year after the services are provided, the client authorizes the lobbying firm to lobby on its behalf on the same or substantially the same matter.

3. The cumulative period should go back to the beginning of the quarter in which the "legislative-related services" were paid.

#### FACTS

You are writing on behalf of an out-of-state entity which was not a lobbyist employer in California and which in the spring became aware of pending legislation in California that might affect its interests.

At that point, the entity contacted a California law firm to obtain advice regarding the legislation and what steps the entity must take should it wish to influence the legislation. The law firm briefly monitored the legislation by obtaining copies of the bills and sending them to the client. The law firm also provided legal advice to the client regarding the requirements for becoming a lobbyist employer should it wish to influence California legislation.

The law firm did not provide lobbying services and referred the client to a lobbying firm. The client then contracted with the lobbying firm for monitoring services only.

In September, the client determined that it wished to influence the pending legislation and at that time authorized the lobbying firm to engage in direct communication for that purpose.

In summary, the law firm received payments during the spring and summer for monitoring and legal services. The lobbying firm received payments during the spring and summer for monitoring services. The lobbying firm also received payments in September for lobbying services.

ANALYSIS

The Act does not impose disclosure requirements on an entity until it qualifies as a filer. However, once an entity qualifies as a lobbyist employer, if it makes payments to a law firm which is not a lobbying firm for legal services related to its lobbying interests or to monitor legislation, it must report such payments as "other payments to influence." (Regulation 18616.)

Section 82039.5 provides:

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

- 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.

Regulation 18614 provides:

a) The following payments from a client to a lobbying firm shall be considered payments for lobbying services:...

- 2) Payments for legislative-related services only if, within one year after the services are provided, the client, either directly or through an affiliated entity, expressly or implicitly authorizes the lobbying firm to communicate directly with an elected state official, legislative official or agency official for the purpose of influencing legislative or administrative action on the same or substantially the same matter...

c) The following definitions apply to this section:

- 1) "Legislative-related services" includes researching, monitoring, analyzing or drafting statutes, regulations or pending or proposed legislative or administrative action, providing advice or recommending strategy concerning pending or proposed legislative or administrative action, and similar services in the absence of express or implied authorization to engage in direct communication...

d) When a payment for initiative-related or legislative-related services made to a lobbying firm in a previous reporting period must be reported retroactively pursuant to this section, the payment

shall be reported on the report for the then current calendar quarter and the lobbying firm and lobbyist employer shall indicate the calendar quarter in which the payment was made or received....For purposes of subsections (a)(2) and (a)(3), the lobbying firm and lobbyist employer shall indicate, in addition to the information required by 2 Cal. Code Regs. Sections 18613(a) and 18616(b), that the payment was for initiative-related or legislative-related services and the date upon which the person making the payment or the affiliated entity authorized the lobbying firm to engage in direct communication....

Therefore, the client qualified as a lobbyist employer in September when it authorized the lobbying firm to engage in direct communication. Since it authorized the lobbying firm to engage in direct communication within a year of the date it made payments to the firm for monitoring services on a matter which was the same or substantially the same as the issue it was monitoring, it was obligated at that point to report retroactively those legislative-related services.

The payments for the legislative-related services should be reported on the third quarter statements filed by the lobbyist employer and lobbying firm. Those reports should indicate the previous quarters in which payments for legislative-related services were received or made, as well as the date the client authorized the lobbying firm to lobby.

Neither the law nor the regulations address what date to identify as the cumulative period on the lobbyist employer's first report. We believe the beginning of the quarter the lobbyist employer made its first payment to the lobbying firm to monitor legislation meets the intent of the Act.

If you have additional questions, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Wayne P. Imberi  
Political Reform Consultant