



FAIR POLITICAL PRACTICES COMMISSION

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August 12, 1999

Judy Mack
California Retailers Association
980 Ninth Street, Suite 2100
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. I-99-195**

Dear Ms. Mack:

This is in response to your request for advice under the lobbying disclosure provisions of the Political Reform Act (the "Act").¹ Since you are seeking advice on behalf of unidentified members of the California Retailers Association, your letter is considered a request for informal assistance.²

QUESTION

Nine members of the California Retailers Association (the "Association"), paid a special assessment to the Association of \$5,000 each to retain a lobbyist to pursue a specific issue before the Legislature, Governor and State Department of Industrial Relations. Have the nine members become lobbyist employers, \$5,000 filers, or a lobbying coalition?

CONCLUSION

The \$5,000 payments will not qualify the members as lobbyist employers or the group as a lobbying coalition. Each member which is already a lobbyist employer will report the \$5,000 payment on its quarterly Lobbyist Employer Report (Form 635). Those members that are not lobbyist employers will complete the Report of Person Spending \$5,000 or More to Influence Legislative or Administrative Action (Form 645) as a "\$5,000 filer."

¹Government Code Section 81000-91014. Commission regulations appear at title 2, sections 18109-18995, of the California Code of Regulations.

²Informal 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).)

FACTS

Nine members of the Association each paid a \$5,000 assessment to the Association to retain a lobbyist for a particular issue. The lobbyist will work on the issue before the Legislature, Governor and the State Department of Industrial Relations. You indicated in our July 19, 1999, telephone conversation that the Association is not participating in this activity, but the lobbyist retained by the Association for other matters will also lobby this issue. The members did not have a say in selecting the lobbyist and exercise no direction or control over the lobbyist's actions.

Several of the members have asked what their specific reporting obligations will be regarding this relationship.

ANALYSIS

The Act's lobbying disclosure provisions apply to persons who qualify as lobbyist employers,³ who directly or indirectly make payments to influence legislative or administrative action of \$5,000 or more in any calendar quarter, and who become a lobbying coalition. (Section 86115, Regulation 18616.4.) A lobbying coalition is a group of 10 or more persons that make payments to the coalition to share the cost of employing a lobbyist or contracting for the services of a lobbying firm. (Regulation 18616.4.)

Membership in a bona fide association, including any bona fide federation, confederation, or trade, labor or membership organization, as well as payments for regular membership dues, are not counted for purposes of qualifying as a lobbyist employer or lobbying coalition. Except for filers that are governmental entities, regular membership dues also are not reportable lobbying payments. (Regulations 18239.5, 18616(g)(4), 18616.4.) However, when members of a bona fide association are assessed additional fees specifically for the purpose of influencing legislative or administrative action, the additional payments must be reported. Section 82045 provides:

“Payment to influence legislative or administrative action’ means any of the following types of payment:

(a) *Direct or indirect payment to a lobbyist* whether for salary,

³A person qualifies as a lobbyist employer when the person either employs one or more lobbyists for economic consideration, or contracts for the services of a lobbying firm for economic consideration. When a person compensates an in-house lobbyist for one-third of his or her time in direct communication, the person is a lobbyist employer. Additionally, if a person pays \$2,000 in a calendar month to a contract lobbyist, the person is a lobbyist employer. (Section 82039.5, Regulation 18239.)

A “person” includes an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert. (Section 82047.)

fee, compensation for expenses, or any other purpose, by a person employing or contracting for the services of the lobbyist *separately or jointly with other persons*;

(b) *Payment in support or assistance of a lobbyist* or his activities, including but not limited to the direct payment of expenses incurred at the request or suggestion of the lobbyist;

(c) Payment which directly or indirectly benefits any elective state official, legislative official or agency official or a member of the immediate family of any such official;

(d) Payment, including compensation, payment or reimbursement for the services, time or expenses of an employee, for or in connection with direct communication with any elective state official, legislative official or agency official;

(e) Payment for or in connection with soliciting or urging other persons to enter into direct communication with any elective state official, legislative official or agency official.”

(Emphasis added.)

Because the additional payments will be made to one of the Association’s regular lobbyists through and under the direction and control of the Association, and no entity outside of the organization is participating in this activity, the group will not qualify as a lobbying coalition, even if 10 or more members ultimately join in the effort. In addition, the members will not qualify as lobbyist employers.

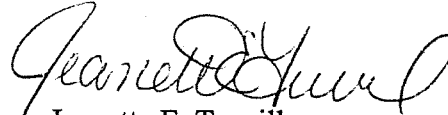
A “\$5,000 filer” is an individual or entity that does not employ a lobbyist or a lobbying firm but makes payments totaling \$5,000 or more in a calendar quarter for the purpose of influencing legislative or administrative action. (Section 86115(b).) In our July 23, 1999, telephone conversation, you indicated that none of the nine members is a lobbyist employer.⁴ Therefore, each member that paid a special assessment of \$5,000 in addition to its regular membership dues must complete a Report of Person Spending \$5,000 to Influence Legislative or Administrative Action (Form 645) for the calendar quarter in which the payment was made. A “\$5,000 filer” does not register in a manner similar to that required for a lobbyist employer and is subject to the quarterly reporting requirement only if the filer pays \$5,000 or more in that quarter for lobbying activity. (Sections 86100(d), 86116.)

⁴ A member that is a lobbyist employer would report the additional fees on its quarterly Report of Lobbyist Employer (Form 635) as “other payments to influence legislative or administrative action” (Part III.D).

I trust this answers your questions sufficiently. If you have any other questions, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Technical Assistance Division

SGC/JET/jt