



FAIR POLITICAL PRACTICES COMMISSION

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June 27, 2000

Judy Spelman
P.O. Box 1204
Point Reyes Station, CA 94956

**RE: Your Request for Advice
Our File No. A-00-128**

Dear Ms. Spelman:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ Please note that the Commission can only give advice prospectively and we cannot render any advice relating to past conduct. (Regulation 18239(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that has already taken place.

QUESTION

Are you required to register as a lobbyist if you receive compensation from Health Care for All-California (HCA-CA) for work previously done as a volunteer, and if not, under what circumstances would you be required to register?

CONCLUSION

Compensation you receive now for volunteer services provided in the past will not require you to register as a lobbyist as long as there was no understanding at the time the services

¹ Government Code section 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

were provided that you would be compensated for your lobbying efforts. If you are compensated in the future for lobbying activities, you will be required to register as a lobbyist if you meet the qualifying tests described in the following analysis.

FACTS

You are employed by Kaiser Hospitals as a registered nurse in a hospital emergency room. Since 1995, you have been taking time off from your work to volunteer for a consumer advocacy group called Health Care for All California (HCA_CA) which is working for universal health care coverage. You have received no salary from HCA-CA but have received several hundred dollars in reimbursement for printing, mailing and transportation costs, since 1995.

As a member of HCA-CA, you wrote and co-wrote several pieces of health reform legislation (SB 2123 and SB 480) in 1998 and 1999 and lobbied for the passage of those bills. Presently, you are working with HCA-CA to fund and implement the universal health care study, SB 480, and to initiate a state application for a federal grant to support the study effort. Your current efforts are focused on trying to convince the Governor to not eliminate SB 480 funding from the state budget.

You indicate that volunteering for HCA-CA is creating a financial hardship for you and your family because of the number of work days you have missed. You have asked HCA-CA to pay you the equivalent of your nursing salary when you spend work days away from the hospital to work on HCA-CA matters. You have also asked them to consider making retroactive compensation of \$4,000 - \$5,000 for work missed over the past few years.

You also stated that you received \$5,000 from the California Health Care Foundation (CHCF) for work regarding a study of options for financing universal health coverage. As the chairwoman of the Consumer Advisory Board to the study you selected the Principal Investigators for the study and helped to assemble the academic team which participated in the study. During our telephone conversation of June 13, 2000, you stated that this work did not entail any lobbying.

ANALYSIS

Section 82039 defines a lobbyist as:

“(A)ny individual who is employed or contracts for economic consideration, other than reimbursement for reasonable travel expenses, to communicate directly or through his or her agents with any elective state official, agency official or legislative official for the purpose of influencing legislative or administrative action, if a substantial or regular portion of the activities for which

he or she receives consideration is for the purpose of influencing legislative or administrative action.”

Key to the definition of lobbyist is the receipt or promise of economic consideration to lobby. Volunteers who lobby do not fall within the definition of lobbyist, and volunteers who are reimbursed only for reasonable travel expenses are still deemed to have not received any compensation.

Regulation 18239 (copy enclosed) provides two tests for determining whether an individual is required to register as a lobbyist. One test applies to “in-house” lobbyists - those who lobby only on behalf of their employer - while the other test applies to “contract” lobbyists who lobby on behalf of at least one person other than their employer. Because HCA-CA is not your employer, the appropriate test you should employ is the one for contract lobbyists. The definition of a contract lobbyist is an individual who receives or becomes entitled to receive \$2,000 or more in compensation in any calendar month for engaging in direct communication, other than administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action. (Regulation 18239(b).)

“Direct communication” is defined to mean “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.” (Regulation 18239(d)(3).)

“Influencing legislative or administrative action” is defined as “communicating directly or taking any other action for the principal purpose of supporting, promoting, influencing, modifying, opposing, delaying, or advancing any legislative or administrative action.” (Regulation 18239(d)(4).)

Regarding your future activity, pursuant to Regulation 18239, you will not be required to register as a lobbyist unless you receive \$2,000 or more a month for direct communication, other than administrative testimony, with one or more qualifying officials for the purpose of influencing legislative or administrative action.²

² Prior to January 1, 1997, the qualifying tests for lobbyists included 1) a compensation test of \$2,000 or more in a calendar month plus any amount of direct communication with legislative or agency officials for the purpose of lobbying, or 2) any amount of compensation plus 25 “contacts” with legislative or agency officials for the purpose of lobbying. Amounts you received during 1995 and 1996 over and above reimbursement for travel expenses would count for purposes of determining whether you qualified as a lobbyist at that time.

Enclosed is a copy of the Commission's information manual for lobbyists. If I can be of any additional assistance please do not hesitate to contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca
Assistant General Counsel

A handwritten signature in cursive script that reads "Wayne Imberi".

By: Wayne Imberi
Political Reform Consultant

Enclosures