



FAIR POLITICAL PRACTICES COMMISSION

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August 29, 2008

Linda Civitello-Joy, CEO
Breathe California, Golden Gate Public Health Partnership
2171 Junipero Serra Blvd. Suite 720
Daly City, CA 94014

Re: Your Request for Advice
Our File No. A-08-129

Dear Ms. Civitello-Joy:

This letter responds to your request for advice on behalf of Breathe California, Golden Gate Public Health Partnership ("Breathe Golden Gate") and its employee, Andy Katz, regarding the lobbying provisions of the Political Reform Act (the "Act").¹ Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of local lobbying rules.

QUESTIONS

How should Breathe Golden Gate and its employee Andy Katz be registered under the lobbying provisions of the Act?

CONCLUSION

Breathe Golden Gate must register as a lobbyist employer under the Act. Mr. Katz must register as a lobbying firm because he provides lobbying services to the other Breathe non-profits.

FACTS

You are CEO of the non-profit organization, Breathe California, Golden Gate Public Health Partnership ("Breathe Golden Gate"). Breathe Golden Gate is associated with four other separate non-profit corporations through Breathe California, an intellectual property trust which they jointly own for the benefit of protecting their name,

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

URLs, and trademark. The non-profits collaborate to share resources when possible to further their shared mission.

Your organization exists to fight lung disease and promote clean air and public health. Each "Breathe" non-profit operates in a specific territory in California. For the last year and a half, the CEO of one of the groups, Darlene Downing of Breathe California Central Coast, has coordinated your group's government relations functions with regard to legislation at the state level that the groups may wish to support or oppose. Each of the other Breathe non-profits paid for a portion of Ms. Downing's time and expenses to provide this service.

Ms. Downing has been registered as an independent lobbyist firm. Each of the Breathe non-profits, including the one that employed Ms. Downing, was registered as a lobbyist employer. Ms. Downing's office handled all of the administrative paperwork and processed all the reports for each of the non-profits. The majority of her time was spent coordinating meetings, helping the non-profits reach consensus on official positions, and helping the non-profits formulate policy regarding how they would each approach statewide legislative issues. You state she did not actually spend much of her time directly "lobbying" –i.e. meeting with legislators or their staff and trying to influence them.

Ms. Downing left her employment with Breathe Central Coast. Your non-profit group, Breathe Golden Gate, offered to take over coordinating a joint governmental relations program for all the Breathe non-profits. Your employee, Andy Katz, is now coordinating this effort.

You have submitted the application for Mr. Katz to become an independent lobbyist, and the other Breathe non-profits have authorized him to conduct governmental relations functions for them as well.

You ask whether Mr. Katz meets the threshold to be considered a lobbyist, because much of his time is spent staffing your committee, not actually visiting legislators and testifying. About 30 percent of his time is spent coordinating activity, and probably less than 10 percent of this time is spent meeting with legislators and testifying at hearings. Each Breathe non-profit pays him \$500 per month for governmental relations work, which includes meeting with legislators and other lobbying activities. He is paid a total of \$25,830 in compensation, \$2,400 for administrative costs (filing reports with the Secretary of State, recording minutes, and sending out notices), and \$1,770 in estimated office and travel expenses.²

You wish to know if Mr. Katz must register as a lobbying firm, and, as a result, if Breathe Golden Gate and other Breathe non-profits must register as lobbyist employers.

² This amount includes estimated expenses for items such as travel, office supplies, postage, telephone, Internet, printing, and photocopying. The costs will be billed in amounts actually incurred.

ANALYSIS

1. Lobbyist

The word "lobbying" is a common expression for "influencing legislative or administrative action." The Act defines "influencing legislative or administrative action" as promoting, supporting, influencing, modifying, opposing or delaying any legislative or administrative action by any means, including but not limited to the provision or use of information, statistics, studies, or analyses. (Section 82032.) In addition, "payments to influence legislative or administrative action" include, among other things: (1) payments for services, time or expenses of an employee, for or in connection with direct communication with any elective state official, legislative official or agency official, and (2) payments 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. (Section 82045(d) and (e).)

A lobbyist is defined under Section 82039 as:

"[A]ny individual who receives two thousand dollars (\$2,000) or more in economic consideration in a calendar month, other than reimbursement for reasonable travel expenses, or whose principal duties as an employee are, 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."

"Compensation" is defined in Regulation 18239(d)(2) as ". . . any economic consideration, other than reimbursement for reasonable travel expenses, i.e., expenses for transportation plus a reasonable sum for food and lodging."

Regulation 18239(d)(3) also defines the term "direct communication" as follows: ". . . 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."

When applying the compensation test, an individual or entity must count all compensation received for the purpose of engaging in direct communication with an official to influence legislative or administrative action, including compensation received in connection with travel. However reimbursement for travel expenses (i.e. air fare, taxi fare, food, and lodging) is not counted. (*Pessner* Advice Letter, I-93-268.)

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

and attending meetings, if such activities are in connection with direct communication.³ In addition, payments received for soliciting or urging other persons to enter into direct communication must also be counted. (Section 82045(e).)

Because Mr. Katz receives \$25,830 a year or \$2,152.50 a month from all the Breathe non-profits for his governmental relations activities,⁴ he is considered a lobbyist under the Act.

2. Lobbying Firms Under the Act

The Act contains certain disclosure requirements and prohibitions for those persons who are “lobbyists,” “lobbying firms” and “lobbyist employers” as those terms are defined by the Act. A “lobbying firm” means “any business entity, *including an individual contract lobbyist*, which meets either of the following criteria” under 82038.5(a): (Emphasis added.)

“(1) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity is a lobbyist.

“(2) The business entity receives or becomes entitled to receive any compensation, other than reimbursement for reasonable travel expenses, to communicate directly with any elective state official, agency official, or legislative official for the purpose of influencing legislative or administrative action on behalf of any other person, if a substantial or regular portion of the activities for which the business entity receives compensation is for the purpose of influencing legislative or administrative action.” (Emphasis added.)

Regulation 18238.5 elaborates on this definition:

“(a) A business entity is a lobbying firm pursuant to Government Code Section 82038.5(a)(2) if it receives or becomes entitled to

³ Background studies and research activities undertaken for purposes other than to influence legislative or administrative action are not counted. (*Sutton Advice Letter, No. I-99-093; Robeck Advice Letter, No. I-92-231.*)

⁴ Your facts indicate Mr. Katz’s governmental relations duties include preparation work such as researching and preparing reports, attending meetings, helping formulate legislative policy direction, as well as direct communication with officials. All income for these activities counts toward the lobbyist compensation test.

receive at least \$ 5,000 in compensation in any calendar quarter for the purpose of influencing legislative or administrative action on behalf of any other person, and any partner, owner, officer, or employee of the business entity engages in direct communication for the purpose of influencing legislative or administrative action.”

Thus, there is a two part test – the receipt of at least \$5,000 in compensation in a calendar quarter for the purpose of influencing legislative or administrative action and “direct communication” by any partner, owner, officer or employee of the business entity.

Given the revenue that is received for Mr. Katz’s governmental relations services, which is in excess of the above threshold, and given the fact that Mr. Katz engages in direct communication for the purpose of influencing legislative or administrative action, he qualifies as a “lobbying firm”⁵ under the Act and should be so registered with the Secretary of State’s office.

2. Lobbyist Employer:

Section 82039.5 defines a lobbyist employer, in relevant part, as 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.”

Under this definition, Breathe Golden Gate and the other affiliated Breathe non-profits are lobbyist employers. We reach this conclusion because Breathe Golden Gate and the other Breathe non-profits are providing compensation to Andy Katz for governmental relations services for the “purpose of influencing legislative or administrative action.” Therefore, the Breathe non-profits are employing or contracting with Mr. Katz to lobby on their behalf, and each non-profit must file a separate lobbyist employer report.⁶ (Section 82039.5.)

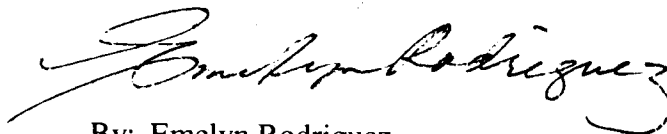
⁵ Note that an individual contract lobbyist is included within the definition of “lobbying firm.” (Section 82038.5: *Polanco* Advice Letter, I-97-347.)

⁶ We note that in the *Macklin* Advice Letter, No. A-86-217, we advised the Northern and Southern affiliates of the American Civil Liberties Union to file a consolidated report as a single lobbyist employer. The advice in *Macklin* is limited to the facts of that case, and was based in part on the fact that these were two affiliates of the same organization. That advice does not apply to your situation, which involves five legally separate and distinct entities, each individually contracting for services from a single lobbyist.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script, appearing to read "Emelyn Rodriguez". The signature is written in black ink and is positioned above the typed name.

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl