



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 8, 2019

Kevan Insko
Co-Director, FCL Education Fund and FCLCA
1225 8th Street, Suite 220
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-19-119

Dear Ms. Insko:

This letter responds to your request for advice on behalf of yourself, FCL Education Fund, Friends Committee on Legislation of California (“FCLCA”), and FCLCA’s other in-house lobbyist regarding the lobbying provisions of the Political Reform Act (“Act”).¹ Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71); any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

If FCL Education Fund makes a grant to its affiliated entity, FCLCA, to lobby on its behalf, what are the registering and reporting obligations if you and another FCLCA in-house lobbyist communicate directly or through an agent with an elective state official, agency official, or legislative official for the purposes of influencing legislative or administrative action?

CONCLUSION

If FCL Education Fund makes a grant to FCLCA to lobby on its behalf, you and the other in-house lobbyist will become lobbying firms. As FCLCA is currently registered, FCL Education Fund will also become a lobbyist employer.

FACTS AS PRESENTED BY REQUESTER

You are a co-director of FCL Education Fund, an Internal Revenue Code Section 501(c)(3) educational organization registered in California as a tax-exempt nonprofit corporation. In 2019, FCL Education Fund’s board decided to make the Internal Revenue Code Section 501(h) election, allowing it to allocate up to 20% of its exempt expenditures for direct lobbying and 25% of that

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.

amount for grassroots lobbying. Now that FCL Education Fund has taken the election, it is developing several projects that involve an element of lobbying in its program.

FCL Education Fund is affiliated with an Internal Revenue Code Section 501(c)(4) organization called the Friends Committee on Legislation of California ("FCLCA"), which has been representing the views of Quakers with the California Legislature since 1952. You are also a co-director of FCLCA. FCL Education Fund reimburses FCLCA for all work done on its behalf and for all expenses, overhead, etc. According to an expense reimbursement and allocation agreement between FCL Education Fund and FCLCA, FCLCA serves as a common paymaster for you and the two other staff members common to FCL Education Fund and FCLCA.

FCLCA quarterly presents a detailed invoice to FCL Education Fund for research and educational work not connected to lobbying that is performed by staff for the benefit of the Education Fund. FCLCA also presents an invoice for administrative services and fundraising work performed for the Education Fund, along with overhead proportionate to the percentage of staff time worked. The reimbursement agreement applies specifically to non-lobbying related work.

You, as well as fellow co-director of the nonprofits, James Lindburg, are registered lobbyists in California and exclusively lobby on behalf of FCLCA. FCLCA is registered as a lobbyist employer. As advocates for Quaker values, FCLCA has lobbied the state legislature and developed considerable expertise.

The FCL Education Fund is considering making a grant to FCLCA to perform the lobbying aspect of its programs. The grant would be administered and documented separately from the reimbursement process. The grant would cover staff time and associated overhead. A grant agreement will spell out how the grant funds are to be used and reported back to the FCL Education Fund.

ANALYSIS

Under Chapter 6 (commencing with Section 86100), various individuals and entities are required to report financial information concerning their lobbying activities, including the lobbying activities of their agents, in attempting to influence state administrative and legislative action. Among these reporting entities are lobbying firms. An individual contract lobbyist can qualify as a lobbying firm if he or she is a lobbyist compensated for lobbying on behalf of his or her employer and another entity. (Section 82038.5; Regulation 18238.5(c).) FCLCA's in-house lobbyists are registered in California. Those individuals will be lobbying on behalf of FCL Education Fund once the Education Fund makes the grant to FCLCA to perform the lobbying aspect of its programs. As such, you and Mr. Lindburg will receive compensation from FCLCA and the FCL Education Fund. To the extent that you and Mr. Lindburg will lobby on behalf of two separate entities, you have become lobbying firms under Section 82038.5.

The Act's lobbying disclosure provisions apply to entities that qualify as lobbyist employers. (Section 86115.) A lobbyist employer is any person that employs one or more lobbyist for economic consideration for the purpose of influencing or attempting to influence legislative or administrative action and any person who contracts with a lobbying firm for the purpose of influencing or attempting to influence legislative or administrative action. (Section 82039.5;

Regulation 18239.5.) Given that FCL Education Fund would be retaining two lobbying firms, it is a lobbyist employer. Lobbyist employers are required to file quarterly reports with the Secretary of State in order to disclose all direct payments to lobbyists and lobbying firms, as well as “other payments to influence” legislative or administrative action by the Legislature. (Section 86116(h)(1).)²

The following steps should be taken to properly report the lobbying activities of the FCL Education Fund, FCLCA, and you and Mr. Lindburg as lobbying firms:

- The FCL Education Fund must complete a Lobbying Firm Activity Authorization (Form 602) listing you and Mr. Lindburg as lobbying firms. The Form 602 must be attached to the lobbying firms’ Registration Statements (Form 601). In addition, a Lobbyist Employer Report (Form 635) must be filed quarterly, as well as all applicable attachments. The grant to FCLCA must be reported on the first Form 635 filed as a payment to influence legislative or administrative action. However, we note that the FCL Education Fund is not required to file a Lobbyist Employer Registration Statement (Form 603) to the extent that it only employs you and Mr. Lindburg as registered lobbying firms.
- As a registered lobbyist employer solely employing two lobbying firms, FCLCA has the election to amend its current Registration Statement (Form 603), complete a Lobbying Firm Activity Authorization (Form 602) listing you and Mr. Lindburg as lobbying firms, which must be attached to the lobbying firms’ Registration Statements (Form 601). Alternatively, to the extent it employs only registered lobbying firms, FCLCA is not required to maintain its status as a registered lobbyist employer and may terminate its status as a registered lobbyist employer by filing a Notice of Termination (Form 606), so long as it completes a Lobbying Firm Activity Authorization (Form 602) that is submitted as an attachment to the lobbying firms’ Registration Statements (Form 601) and continues to file a quarterly Lobbyist Employer Report (Form 635), as well as all applicable attachments
- You and Mr. Lindburg must separately file Lobbying Firm Registration Statements (Form 601s), attaching the Form 602s completed by the FCL Education Fund and FCLCA, as well as a copy of your Lobbyist Certification Statements (Form 604s), which should have been attached to FCLCA’s previously filed Lobbyist Employer Statement (Form 603). In addition, you and Mr. Lindburg must file quarterly Lobbying Firm Reports (Form 625s), as well as all applicable attachments.

² Section 82045 enumerates several forms of payment that constitute “payment to influence legislative or administrative action,” including any “direct or indirect payment to a lobbyist whether for salary, 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.”

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

Sincerely,

Dave Bainbridge
General Counsel



By: Ryan O'Connor
Counsel, Legal Division

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