

Nan Hambleton  
Ken Finney  
Natalie West  
Ted Prim ✓

March 11, 1976

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PAUL D. SCHAEFFER

Lobbyist Questions

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Sue McCarthy, a San Francisco attorney, has asked for answers to a number of questions concerning when a lawyer representing a client before the PUC becomes a lobbyist. Following are the questions plus my draft answers. I would appreciate your comments as soon as possible.

QUESTION 1: Do off-the-record conferences initiated by a member of the Public Utilities Commission have the effect of triggering the time test contained in 18239(e)(1)(D)?

DRAFT ANSWER: Yes, because such off-the-record conversations would be considered direct communications, which are not public testimony, with an official of an agency to whom the public testimony is directed.

QUESTION 2: Does time spent by counsel discussing the case with the client and witness count toward any of the time tests?

DRAFT ANSWER: No.

QUESTION 3: Does time spent preparing legal briefs or memoranda count towards any of the time tests contained in 18239(e)?

DRAFT ANSWER: No, Regulation 18239(e)(3)(B) states that time spent on research (the gathering of information, statistics, studies, analyses and the preparation of legal pleadings, briefs, memoranda or the preparation of bill analyses) are not includable for the purposes of meeting the time tests of subsection (e).

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QUESTION 4: Is time spent by counsel listening to testimony by other parties involved in the hearing in which the counsel is involved includable in the time tests found in subsection (e).

DRAFT ANSWER: No.

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GRAHAM & JAMES  
ONE MARITIME PLAZA  
SAN FRANCISCO, CALIFORNIA 94111  
TELEPHONE (415) 905-2171

CABLE ADDRESS ALL OFFICES  
"CHALGRAY"

I. T. 470043  
R. C. A. 278309  
W. L. 340143

March 10, 1976

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Robert Stern, Esq.  
General Counsel  
Fair Political Practices Commission  
1100 F Street  
Sacramento, California 95804

Re: Direct Communication Under  
FPPC Reg. §18239(e)(2)(D)  
Our File: PROP 9

Dear Mr. Stern:

Attorneys practicing before the Public Utilities Commission are not required to register as lobbyists within the meaning of §82039 of the Government Code unless a substantial or regular portion of their activities for which they receive economic consideration is for the purpose of "influencing . . . administrative action". A regulation adopted by the Fair Political Practices Commission on August 20, 1975, provides certain time tests which must be met before such an attorney is in fact considered to have engaged in these activities a substantial or regular portion of his time. §18239(e)(2)(D) provides that, if the individual spends one hour in direct communication which is not public testimony with officials of the agency to whom the public testimony is directed, as well as 40 hours engaging in such public testimony, the substantial or regular test will have been exceeded.

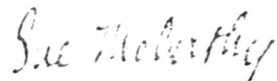
We are concerned whether certain activities of attorneys which are normally thought of as involving the practice of law and not traditional "lobbying" may be considered to constitute the type of "direct communication" which is covered by this regulation. We refer specifically to pre-hearing conferences which attorneys representing clients in proceedings before the Public Utilities Commission engage in at the request of the hearing examiner assigned to the case. These conferences generally are on the public record; however, certain examiners have a practice of occasionally going off the record during the course of the conference for the purpose of

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delineating issues or discussing particular facts in the presence of counsel for both sides. Over a two-month period, it is possible that the time off the record with the examiner may, in the aggregate, exceed one hour. While the issues or facts discussed off the record are not necessarily ex parte in nature, an element of advocacy is unavoidable given the representative role of counsel in these proceedings.

We respectfully request your informal opinion confirming our understanding that time spent when the examiner requires the proceeding to go off the record during these conferences, where counsel for both sides are present, for the purpose of discussing matters raised by the examiner or to clarify issues, is counted as time spent as "hours of public testimony", rather than as time spent in "direct communication", on the ground that this type of communication is not of the type which was intended to be covered by §18239(e)(2)(D).

Yours truly,



Susan Chan McCarthy  
for  
GRAHAM & JAMES

SCM:bcb