California Legislature

Joint Legislative Audit Committee

925 L STREET, SUITE 750
SACRAMENTO, CALIFORNIA 95814
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WALTER M. INGALLS
CHAIRMAN

June 1, 1982 078

The Honorable President pro Tempore of the Senate
The Honorable Speaker of the Assembly
The Honorable Members of the Senate and the
Assembly of the Legislature of California

Members of the Legislature:

Transmitted herewith is the Auditor General's Letter Report No. 078 which answers certain questions asked regarding the lobbying activities and reporting requirements of county governments under the Political Reform Act of 1974.

Since elected county officials are exempt from certain provisions of the Act, it appears that it is difficult to readily determine the full amount spent on county lobbying activities.

Respectfully submitted,

WALTER M. INGALLS
Chairman, Joint Legislative
Audit Committee

WMI:smh

Attachment

Telephone:
(916) 445-0255

Thomas W. Hayes
Auditor General

STATE OF CALIFORNIA

Office of the Auditor General

660 J STREET, SUITE 300
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May 27, 1982

Letter Report 078

Honorable Walter M. Ingalls
Chairman, and Members of the
Joint Legislative Audit Committee
925 L Street, Suite 750
Sacramento, California 95814

Dear Mr. Chairman and Members:

In response to a request by the Joint Legislative Audit Committee, we examined the lobbying activities of county governments and the reporting requirements for lobbying contained in the Political Reform Act of 1974. This review was conducted under the authority vested in the Auditor General by Sections 10527 through 10528 of the Government Code.

We were asked to determine if differences exist between the requirements placed on public officials to report lobbying and those placed on private citizens. We were also asked to identify the sources of funds that counties use for lobbying activities and to summarize the expenditures counties make in support of lobbying.

The Political Reform Act established different lobbyist reporting requirements for certain public officials and private citizens. Elected public officials and California state employees acting in their official capacity are exempt from reporting their lobbying activities to the Secretary of State, whereas anyone else who lobbies is not. Thus, nonelected public officials, including most employees of local governments, and private citizens are required to report their lobbying activities. Another difference in the reporting requirements allows nonelected public officials to spend more time than private citizens spend on certain types of lobbying activities before they are considered to be lobbyists.

In reviewing county expenditures for lobbying, we determined that the funds supporting county lobbying activities came from a variety of sources, including property taxes, fees, and state funds not restricted to the support of specific programs.

In 1980, ten county governments employed lobbyists; these counties' expenditures for lobbying totaled $718,349. However, this total may not include every dollar that counties spent on lobbying in 1980, since individuals may incur lobbying expenses that they are not required to account for and report. (Appendix A contains a detailed list of county lobbying expenditures for 1980.)

BACKGROUND

The Government Code, Section 50023, provides that a local government agency may spend funds to hire a representative to present information to the Legislature in support of or in opposition to legislation. Representatives are also authorized to meet with officials of executive agencies to present information about or request action on issues that affect the local agency.

Counties can obtain lobbyist services in two different ways: through personal services contracts with private individuals or firms or by designating lobbying duties to county employees. In addition to paying lobbyists' salaries, counties also pay for office space, clerical support, bill service, supplies, and travel. County governments are subject to the provisions of the Political Reform Act whenever they employ lobbyists to attempt to influence state legislative or administrative action.

Under the Political Reform Act of 1974, lobbyists, employers of lobbyists, and others who spend $2,500 or more in a calendar quarter to influence legislative or administrative action are required periodically to disclose all activities dealing with elected state and legislative officials, state political candidates, and state agency officials.

The Political Reform Act requires that lobbyists and employers of lobbyists disclose certain transactions with candidates for state office, elected state officers, and legislative and agency officials. On a quarterly basis, lobbyists and

employers of lobbyists must report all receipts and expenses associated with any lobbying activity. In addition to reporting on the payments made for lobbying activity, both lobbyists and employers of lobbyists must disclose the nature of their lobbying activities each quarter. This requirement includes identifying the specific legislation that they actively supported or opposed during the reporting period. In addition, lobbyists and employers of lobbyists must list the state agencies that they have contacted and the agency regulations, policies, or procedures that they attempted to influence.

Three state departments share most of the responsibilities for implementing the provisions of the Political Reform Act. The Fair Political Practices Commission (commission) is responsible for administering the act. This responsibility includes establishing regulations, providing technical assistance to those affected by the act, and facilitating compliance with the act. The Secretary of State collects the reports of lobbyists' activities and expenditures and makes this information available to the public. The Franchise Tax Board conducts audits of reports and statements filed pursuant to various provisions of the Political Reform Act.

SCOPE AND METHODOLOGY

We reviewed the Political Reform Act to determine the requirements for reporting lobbying activity and we interviewed officials from the Secretary of State's Office and the Fair Political Practices Commission. We examined other applicable state laws and regulations as well as pertinent opinions issued by the commission. Additionally, we examined commission documents that summarize expenditures for lobbying activities conducted in calendar years 1979 and 1980.

To identify the source of funds used by counties to support lobbying activities, we visited three counties: Los Angeles, Santa Clara, and San Diego. These counties were among the ten counties that reported expenditures for lobbying activities in 1980. We interviewed officials responsible for county budgeting and accounting functions to determine how income to the county is received, accounted for, and spent.

STUDY RESULTS

In the following sections we discuss the requirements for reporting lobbying activities established by the Political Reform Act of 1974, and we explain how the requirements applicable to certain public officials differ from those pertaining to private citizens. We also show that the funds used to support lobbying activities come from a variety of sources, making it difficult to link specific sources of funds with specific lobbying activities. Finally, we explain why the total lobbying expenditures reported by counties for 1980 may not include all amounts actually spent by these counties for lobbying activities.

Lobbyist Reporting Requirements Are Different for the Public and Private Sectors

The Political Reform Act established requirements for reporting lobbying activities. The requirements for public officials and private citizens differ in two ways. First, the Political Reform Act exempts elected public officials and California state employees from reporting their lobbying activities as long as they are acting in an official capacity; in contrast, nonelected public officials and private citizens must report their lobbying activities. Second, nonelected public officials, such as officials or employees of local government agencies, are allowed to spend more time on certain types of lobbying activities than are private individuals before they are considered lobbyists.

The Fair Political Practices Commission applies two tests to determine whether a person is to be considered a lobbyist and therefore subject to the reporting requirements of the Political Reform Act. The commission applies a compensation test and a time test. The Political Reform Act defines a lobbyist as a person who is compensated for the purpose of influencing legislative or administrative action, directly or through an agent, and who engages in such activity on a substantial or regular basis. (See Appendix B for a detailed explanation of the criteria used to determine whether a person is a lobbyist.) A person who does not meet these two tests may nevertheless be required to report lobbying expenditures if that person spends $2,500 or more on lobbying in any given quarter.

For example, if a private citizen is paid to lobby state officials and does so on a regular basis, or if a private citizen spends $2,500 in a quarter on lobbying, that person is then required to report such lobbying activities under the Political Reform Act. In contrast, an elected public official or state employee acting in an official capacity engaging in the same activity would be exempt from filing lobbyist reports under the Political Reform Act even though that person would otherwise be considered a lobbyist. According to the commission, elected public officials are exempt because they often must represent their constituents' interests in other areas of government, including the Legislature and state executive agencies. For example, when elected members of a county's board of supervisors lobby state legislative or state agency officials, they are exempt from reporting these activities.

The other difference between the reporting of lobbying activities by public officials and private citizens involves nonelected public officials. While elected officials and state employees acting in their official capacities are exempt from the reporting requirements of the Political Reform Act, other nonelected public officials are not. Employees of city and county governments, for example, must report their lobbying activities. As mentioned above, to be required to report lobbying activities, an individual must meet the compensation test and the time test or spend $2,500 or more on lobbying in a given quarter. However, the time test applied to employees or officials of local government agencies is different from that for the private citizen. The time test allows local officials to spend more time on certain types of lobbying activities than private individuals before they are considered lobbyists. This higher limit acknowledges that many local public officials routinely work with state officials in such administrative actions as formulating regulations or implementing programs. For example, the director of a county community health organization will probably communicate regularly with a state official to coordinate the local implementation of health programs funded by the State.

Sources of Funds Supporting Lobbying Activities Cannot Be Identified

We were asked to determine whether the sources of funds used by counties to support lobbying activities can be specifically identified and whether any funds that the counties receive from the State are used to support lobbying activities. Funds used by counties to support lobbying activities come from a variety of sources, including property taxes, fees, and state funds that the counties receive that are not earmarked for the support of specific programs.

In 1980, ten county governments reported expenditures totaling $718,349 for lobbying activities. (Appendix A shows the amount of expenditures reported by each county.) In 1980 the salaries of lobbyists constituted 73 percent of these expenditures. The remaining 27 percent included reimbursements for entertainment, office space, supplies, bill service, clerical support, and travel. To determine whether the sources of funds supporting lobbying activities could be identified, we visited three counties that employ lobbyists in Sacramento. Two of the counties have designated employees as lobbyists while the third contracts for lobbying services.

Both the federal government and the State provide counties with funds that they must spend in accordance with specific statutes, regulations, or program requirements. For example, funds that counties receive from state and federal governments for Aid to Families with Dependent Children are restricted to this purpose. However, counties also receive revenue that is not restricted to the support of specific programs, and the county governing boards have greater discretion in deciding how such funds are spent. Typically, these funds are used to finance such general government positions as the county executive, the county counsel, and the county clerk. Sources of discretionary county revenue include property taxes, license and use fees, interest income, and state funds not earmarked for specific programs. Lobbying activities are among those general government activities that are funded through appropriations of discretionary funds.

Because counties commingle various sources of revenue into one cash account, a particular expenditure of county funds cannot always be tied to a given revenue source. In other words, the specific amount of each source of funds supporting county lobbying activities cannot be identified. However, it was possible to determine that the funds that counties use to support lobbying are funds that are not restricted to the support of specific programs.

All Lobbying Expenditures
Need Not Be Reported

Although lobbyists and employers of lobbyists submit quarterly reports to the Secretary of State summarizing their expenditures for lobbying, these reports do not represent all funds spent on lobbying activities during the reporting period. The Political Reform Act does not require every expenditure on lobbying to be reported. Consequently, persons can make expenditures for lobbying activities without being required to register as lobbyists and disclose the nature of their lobbying activities.

As pointed out earlier, some individuals are specifically exempt from reporting their lobbying activities. In other instances, individuals who lobby state officials do not lobby frequently enough to require that they disclose their lobbying activities. Consequently, counties may be spending more for lobbying than the amounts disclosed in their quarterly reports because not all expenditures for lobbying need to be reported.

Since elected public officials acting in their official capacities are exempt from the lobbying provisions of the Political Reform Act, any lobbying expenses that elected public officials incur are not disclosed. For instance, when an elected member of a county board of supervisors or any other elected county official incurs expenses while lobbying state legislative or state executive officials, these expenses need not be reported.

There are still other instances in which individuals who lobby state officials are not always required to account for their lobbying activities. These instances occur because a person must satisfy certain criteria before being required to report as a lobbyist. He or she must engage in lobbying activities on a substantial or regular basis and be paid for lobbying or spend $2,500 or more on lobbying in a calendar quarter.

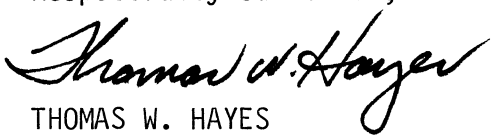
According to these criteria, persons who only occasionally lobby state legislative or state executive officials and who are not compensated more than a specified amount for lobbying are not required to disclose their lobbying expenses. For example, if on occasion a county executive travels to Sacramento to discuss pending legislation with legislators, expenses that he or she incurs for this activity need not be reported. The same is true of occasional lobbying by private citizens. For example, the president of a corporation who occasionally travels to Sacramento to lobby state legislative or state executive officials does not need to report the expenses that he or she spends for this activity. The lobbying activities of such individuals can remain unreported because these individuals do not meet any of the criteria that the commission applies to determine whether a person needs to disclose his or her lobbying expenses. These persons do not lobby on a substantial or regular basis, they are paid for duties other than lobbying, and they do not spend $2,500 or more in a quarter for lobbying activities.

CONCLUSION

The lobbyist reporting requirements of the Political Reform Act of 1974 differ for certain public officials and private citizens. Elected public officials and California state employees acting in their official capacity are exempt from reporting their lobbying activities, whereas private citizens are not. Also, nonelected public officials such as county employees may spend more time on certain lobbying activities than may private citizens before being considered lobbyists.

Additionally, the specific amounts of each source of funds supporting the lobbying activities of counties cannot be identified. However, counties support lobbying activities only with funds that are discretionary, including state funds not restricted to the support of specific programs. In 1980, ten county governments spent a total of $718,349 on lobbying activities. This total may not, however, include all funds that counties spent on lobbying in 1980.

Respectfully submitted,



THOMAS W. HAYES
Auditor General

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Attachments: Responses to the Auditor General's Report
Fair Political Practices Commission
Secretary of State
Appendices

March Fong Eu
Secretary of State

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May 12, 1982

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

As requested in your letter of May 5, 1982, we have reviewed your draft letter report 078 entitled "County Lobbying Activities" and since this office's duties are not germane to the subject, we offer no comments.

Sincerely,

DAVID B. PITMAN, Assistant Chief
Elections and Political Reform

DBP:aem

State of California
Fair Political Practices Commission
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May 11, 1982

Mr. Thomas W. Hayes
Auditor General
Office of the Auditor General
660 J Street, Suite 300
Sacramento, CA 95814

Dear Mr. Hayes:

Thank you for giving the Fair Political Practices Commission an opportunity to respond to your report on County Lobbying Activities.

We think it is important to note that the reporting exemption for elected officials set forth in the Political Reform Act (Government Code Section 86300) came from former Government Code Section 9906 (b) which was passed by the legislature in 1949.

Other than this historical note, we have no further comments.

Sincerely,

Robert M. Stern
General Counsel

RMS:cs

COUNTY EXPENDITURES FOR STATE LOBBYING ACTIVITIES 1979 AND 1980

County	1979 Total	1979 Lobbyists' Salaries	1979 Other[a]	1980 Total	1980 Lobbyists' Salaries	1980 Other[a]
Alameda	$ 70,310	$ 70,310	$ --	$ 82,833	$ 48,791	$ 34,042
Contra Costa	38,191	28,277	9,914	39,800	28,341	11,459
Los Angeles	186,198	139,760	46,438	199,007	138,999	60,008
Orange	88,419	59,783	28,636	101,312	68,921	32,391
Sacramento	50,620	38,039	12,581	63,255	37,214	26,041
San Bernardino	40,249	39,971	278	21,779	20,893	886
San Diego	137,141	133,793	3,348	126,535	121,480	5,055
San Francisco	45,000	45,000	--	4,800	4,800	--
Santa Clara	54,858	38,303	16,555	53,142	37,257	15,885
Ventura	19,444	13,925	5,519	25,886	13,951	11,935
Total	$730,430	$607,161	$123,269	$718,349	$520,647	$197,702

[a] This category includes expenditures for entertainment, office space, supplies, bill service, clerical support, and travel.

Source: Fair Political Practices Commission, Payments to Influence, 1979; Report on Lobbying, 1980.

DETAILED CRITERIA USED TO DETERMINE WHETHER A PERSON IS CONSIDERED A LOBBYIST

According to the Fair Political Practices Commission (commission), a lobbyist is a person who is compensated for the purpose of influencing legislative or administrative action, directly or through an agent, and who engages in such activity on a substantial or regular basis. Compensation is a key element in determining if a person is a lobbyist. But in addition to compensation, the Political Reform Act of 1974 requires that lobbying activity also must be substantial or regular. The amount of compensation a person receives and the amount of time a person spends lobbying for pay are the tests used to determine if a person must register as a lobbyist and file required disclosure reports. Below are the commission's descriptions of these two tests.

The Compensation Test: If a person receives or becomes entitled to receive $1,000 or more in any 30-day period for the purpose of communicating directly with legislative, administrative, or elective state officials, for the purpose of influencing legislative or administrative action, that person qualifies as a lobbyist, regardless of how much time is spent. Reimbursements for reasonable travel expenses and wages received as a full-time employee primarily for services other than influencing are not includible.

The Time Tests: A person who is paid must register and file if in any period consisting of two consecutive calendar months the person does the following:

- Spends a total of 40 hours, including 10 hours in direct communication, influencing or attempting to influence legislative or administrative action; or

- Spends 40 hours engaging in administrative testimony and at least one hour of other direct communication with officials of the agency or agencies to whom the administrative testimony is directed; or

- Spends 200 hours engaging in administrative testimony.

The time tests, with two variations, also apply to employees or officials of local government agencies. Such employees or officials qualify as lobbyists if they do any of the following:

- Spend a total of 40 hours, including 10 hours in direct communication, influencing or attempting to influence legislative action; or

- Spend a total of 100 hours, including 10 hours in direct communication, influencing or attempting to influence legislative or administrative action. (This higher threshold recognizes that many local officials are only involved in administrative actions such as the formulation of regulations or implementation of programs.); or

- Spend 40 hours engaging in administrative testimony and at least one hour of other direct communication with officials of the agency or agencies to whom the administrative testimony is directed; or

- Spend 200 hours engaging in administrative testimony.

The following are not considered lobbyists under the provisions of the Political Reform Act and are not required to register as lobbyists or required to file periodic reports:

- A person who lobbies on a voluntary (unpaid) basis.

- A person who only receives reimbursement for reasonable travel expenses.

- A person who does not meet the time test or whose wages are received as a full-time employee primarily to perform services other than influencing or attempting to influence legislative or administrative action.

- A person who is an elected public official acting in an official capacity.

- A person who is an employee of the State of California acting within the scope of his or her employment. (If such a person would otherwise qualify as a lobbyist, he or she is not allowed to make gifts of more than $10 a month to an elected state officer or legislative official.)

- A person representing a bona fide church or religious society solely for the purpose of protecting the public right to practice the doctrines of such church.

- Any newspaper or other periodical of general circulation, book publisher, radio or television station.

Source: Information Manual for Lobbying Disclosure Provisions of the Political Reform Act, prepared by the Fair Political Practices Commission.