



Administrative Regulations

Number AR2-3
Issue 2

Subject: Procedure for Determination and Registration of City Employees as "Lobbyists" under the Political Reform Act of 1974.

I. Purpose

The purpose of this regulation is to set forth specific guidelines to enable City employees to determine whether they are required to register as "Lobbyists" pursuant to the provisions of the Political Reform Act of 1974.

This administrative regulation is intended to protect City personnel. Neither it nor the Political Reform Act of 1974 is intended to discourage or curtail communication with elected, agency or legislative officials.

II. Scope

This regulation shall be applicable to staff in all City departments directly responsible to the City Manager. In the interest of uniformity, effectiveness and completeness, it is requested that City employees and members of independent departments, boards and commissions also comply with this regulation.

This regulation does not apply personally to the Mayor, City Council, City Attorney, City Prosecutor or the City Auditor, while acting in their official capacities. Further, the provisions set forth in this regulation do not apply to contact by City employees with employees or officers of the federal government or with employees and officers of other local agencies or of states other than California for purposes other than attempting to influence the legislative or administrative actions of the State of California.

It is the responsibility of each department head to enforce the provisions of this regulation as they apply to the employees of his or her department.

III. Amendment

The City Manager may amend the procedures and content set forth in this regulation as required.

IV. Definition of Terms

For the purpose of this regulation, the following terms are defined:

A. Elected State Official - the Office of the Governor, the Attorney General, the Controller, the Secretary of State, the Treasurer, the Superintendent of Public Instruction, members of the State Board of Equalization and members of the Legislature.

B. Agency Official - any members, officers, employees or consultants of any state agency who, as part of their official responsibilities, participate in any administrative action in other than a purely clerical, secretarial or ministerial capacity.

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"Lobbyists" under the Political Reform Act of 1974.

C. Legislative Official - any employee or consultant of the - State Legislature whose duties are not solely secretarial, clerical or manual.

D. Influencing - any activity, the principle purpose of which is to promote, support, influence, modify, oppose or delay any legislative or administrative action.

In measuring employee time spent "influencing legislative or administrative action" do not include travel time or "research" time, i.e., the time spent in analyzing pending legislation and proposed administrative regulations or gathering information, statistics, studies or analyses. Do include time spent communicating or attempting to communicate with elected state officials, legislative officials, and agency officials in the course of attempting to influence legislative or administrative action, as well as time spent directly preparing testimony, urging or arranging for others to attempt to influence, and on other activities the principal purpose of which is to attempt to influence legislative or administrative action.

E. Legislative Action - the drafting, introduction, consideration, modification, enactment or defeat of any bill, resolution, amendment, report, nomination or any other matter by the Legislature or by either house of any committee, subcommittee, joint or select committee thereof, or by a member or employee of the legislature acting in an official capacity. Legislative action also means the action of the Governor in approving or vetoing any bill.

F. Administrative Action - any action related to state agency rate making proceedings and any state agency action related to "quasi-legislative" proceedings, including but not limited to the proposal, drafting, development, consideration amendment or defeat of any rule or regulation. Other than rate making proceedings, dealings with state agency employees which are not intended to alter or affect existing rules or regulations undertaken under such rules or regulations are not considered quasi-legislative proceedings.

G. Communication - to appear as a witness before elected state officials, legislative officials and agency officials, talking with such officials, either in person-or by telephone, corresponding with such officials or answering questions or responding to requests from such officials. Communication may be either direct or through one's agent.

V. POLICY

Determining Whether a City Employee Must Register as a Lobbyist.

When any City employee, during the course of employment, has communication with any elected state official, agency official or legislative official for the purpose of influencing legislative or administrative action and such communication constitutes a substantial or regular portion of the employee's duties, then the employee must continually monitor his time and, based on the following criteria, determine whether he is required to register as a lobbyist.

VI. TESTS

Tests to be Applied to City Employee Activities to Determine Whether Registration as a Lobbyist is Required

The following tests are designed to enable City employees to determine whether activities in which they are engaged require them to register as lobbyists in conformance with the provisions of the Political Reform Act of 1974.

A. Communication Test - was a total of ten hours or more spent by any employee during any consecutive two-month period for:

1. appearing as a witness;
2. talking with elected state officials, agency officials, or legislative officials either in person or

- by telephone
- 3. corresponding with such officials;
- 4. answering questions or inquiries from such officials.

Should an employee spend ten hours or more during any consecutive two-month period engaged in the above activities, a second test, referred to as a "substantial or regular test", must be applied to determine whether that employee's activities require his or her registration as a lobbyist.

B. Substantial or Regular Test

1. Was more than 40 hours, including "communicating" time, spent in any consecutive two-month period influencing or attempting to influence legislative action?
2. Was a total of more than 100 hours, including "communicating" time, spent in any consecutive two-month period influencing or attempting to influence both legislative and administrative action?

C. Alternate "Influencing" Tests Applied to Certain Employees

1. If an employee is authorized by the City to expend or encumber City funds for gifts to persons he/she is attempting to influence, the "time test" shall be whether that employee spends a total of 40 hours or more, including "communicating" time, during any consecutive two-month period influencing or attempting to influence both legislative and administrative action. This test would be applied in-lieu of the 100 hours test set forth in B (2) above.
2. An employee may also be deemed a lobbyist if he/she receives or is entitled to receive \$1,000 or more in any 30-day period, exclusive of reimbursement for travel and of wages which would be received as a full-time employee engaged primarily in performing services other than influencing or attempting to influence legislative or administrative action, for the purpose of communicating directly with elected, agency or legislative state officials.

VII. PROCEDURE TO BE FOLLOWED IF REGISTRATION REQUIRED.

A. If any City employee at any time must answer yes to "A" above and yes to "B" (1) or "B" (2) above, or if the employee exceeds the limitations set forth in "C" (1) or "C" (2) above, this fact must immediately be reported to his or her department heads and to Intergovernmental Relations, and arrangements will be made through Intergovernmental Relations to register that employee as a lobbyist.

VIII. PENALTIES FOR NON-COMPLIANCE

Violation of any of the provisions of the Political Reform Act of 1974 is a misdemeanor. The Attorney General is responsible for prosecuting violations, and the City Attorney and the District Attorney of the city and county in which a violation occurs also have authority to prosecute. Persons convicted of violating any portion of the Act are disqualified for four years from serving as a lobbyist or running for elective office, in addition to other penalties which may be imposed.

In addition to criminal penalties, the Act provides for numerous civil penalties, including monetary penalties and damages and injunctive relief from the courts. The Fair Political Practices Commission has primary responsibility for civil enforcement, but many of the civil penalties may be invoked by any person who resides in the State. Civil penalties may be imposed by the Fair Political Practices Commission or by the courts.

IX. INTERPRETATION AND CLARIFICATION

In the event that any employee has a question regarding the interpretation or desires clarification of this administrative regulation or any other regulation pertaining to the Political Reform Act of 1974, the Intergovernmental Relations Division should be contacted.