

Memorandum

To : Advice Request Meeting Participants

Date : July 17, 1985

From : FAIR POLITICAL PRACTICES COMMISSION

Barbara Milman

Subject: Statement of Economic Interests Reporting

M-85-154

At its July 12, 1985 meeting, the Commission directed the staff to give the following advice relating to reporting receipt of payments for expenses from campaign committees:

A public official who receives payments for travel (including meals and lodging) or for other legitimate political expenses from a campaign committee, should not report those payments as income or as gifts on his or her statement of economic interests. This applies whether the committee reimburses the official for the expenses, gives the official an advance for the expenses, or pays for the expenses directly. This applies to both candidates and their staff. This advice does not apply to payments for or provision of personal travel, meals, lodging or similar expenses for an official. It also does not apply to salaries, consulting fees, honoraria, etc., from a committee; an official who receives such payments must still report them on his or her statement of economic interests.

The rationale behind this advice is that because these payments, which are solely political in nature, are already reported on the committee's campaign statements as campaign expenditures, there is no point in also having them reported on the recipient's Statement of Economic Interests. Staff was directed, however, to look at the campaign reporting forms to make sure that we require these expenditures to be properly identified. We will need to incorporate this advice in our Statement of Economic Interests manuals.

BAM:nwm

Memorandum

To : Chairman Stanford, Commissioners Lee,
Lemons, Montgomery and Roden

Date : July 1, 1985

From : FAIR POLITICAL PRACTICES COMMISSION

Barbara A. Milman

Subject : Advice on Payments of Expenses by Campaign Committees

We have been asked to give advice in a number of situations involving political travel expenses^{1/} for elected officials and for campaign committee staff. The questions generally concern whether an official or a staff member (who is also a government official) has to report receipt of travel expenses as income or as gifts on a Statement of Economic Interests. After reviewing Commission opinions and past advice, I can understand why some officials have complained that our advice has been confusing and contradictory. I think it would be a good idea for the Commission to review the advice in this area, and to direct the staff as to how future advice requests should be answered.

First of all, it should be noted that we are dealing with expenses for political travel. The question of travel expenses for officials engaged in government business will be the subject of a regulation to be presented to you in the fall. Provision of personal travel for an official is almost always a gift. The only question we are asking now is how political travel expenses should be treated.

The Political Reform Act requires public officials to report "income" and "gifts" on their annual Statements of Economic Interests. Section 87203. This applies to all elected officials, and to "designated" appointed or civil service officials -- including legislative staffers and officials in the Executive Branch.

Income is defined in Section 82030(a) as "a payment received, including but not limited to any ... advance ... gift ... gift of food or beverage ... reimbursement for expenses, per diem...." The term "payment" is defined in Section 82044 as "a payment ... advance ... rendering of money, property, services or anything else of value, whether tangible or intangible."

^{1/} This may include car travel or air fare, meals and lodging.

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Looking at the basic definition of income, it seems fairly clear that, unless there is some exception to the definition, a person receives income whenever that person is provided with travel, food or lodging at no cost, is given an advance or per diem to cover the costs of travel, food or lodging, or is reimbursed in cash for expenses for travel, food or lodging.^{2/} Thus if the total value of travel expenses received from one source in a calendar year for travel is \$250 or more (if it is income), or \$50 or more (if it is a gift), it must be reported on the official's Statement of Economic Interests. In the case of travel expenses for a person who acts as a staff member for a political campaign, or for an elected official who attends some other official's political event, we would ordinarily be dealing with income, and not with gifts. A payment is only a gift if the recipient has provided no consideration -- no campaign work for a staffer, or no "value" for an official who attends a political event -- for the payment. Section 82028.

There are, however, some exceptions to the rule that receipt of any thing of value is income. For example, reimbursement for travel expenses or per diem from a bona fide educational, academic, or charitable organization are not income. Section 82030(b)(2). Since a campaign committee is not a bona fide educational, academic or charitable organization, this exception is not relevant.

Another exception is made for campaign contributions reported on campaign statements, which are neither income nor gifts. Sections 82028(b)(4), 82030(b)(1). It is this exception which may be relevant.

In a 1975 opinion issued to Willie Brown, 1 FPPC Opinions 67 (No. 75-055, July 2, 1975), the Commission ruled that payments made on behalf of a candidate, or reimbursements for a candidate's expenses by that candidate's controlled committee are not income or gifts to the candidate so long as they are for bona fide political purposes. In fact, such payments are reported by the candidate's committee as expenditures, not as contributions. Thus they do not come within the literal language of the exception for campaign contributions in Sections 82028(b)(4) or 82030(b)(1). Nevertheless, the Commission held that requiring a

^{2/} Free transportation is a gift. Stone Opinion, 3 FPPC Opinions 52 (No. 77-003, June 7, 1977). Payment for a meal by a third party is a gift (unless it is a political contribution). Hayes Opinion, 1 FPPC Opinions 210 (No. 75-145, Dec. 4, 1975).

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candidate to report these payments as income on his Statement of Economic Interests would serve no purpose, since they already have to be reported on the committee's campaign statement.

Since 1975, the general rationale of the Willie Brown opinion has been applied in a number of situations. However, the advice over the years has not always been consistent.

One rationale for the advice we have often given, that reimbursements for expenses from a campaign committee should not be reported by the recipient, is that since the payments are for political purposes they are, if anything, contributions rather than income. This makes some sense when the recipient is a candidate; payments to candidates normally are treated as contributions unless they are clearly for personal purposes 2 Cal. Adm. Code Section 81215. However, it is not entirely logical to call a payment to a committee staff member for travel expenses a contribution simply because it is for political purposes, since staff members do not normally receive contributions.

If the travel payments are treated as potential contributions, because they are "political," they are probably not reportable at all by the recipients. When individuals are reimbursed for expenses by a campaign committee because they attend an event or work on a campaign, they have provided consideration for the payments; therefore the payments are not contributions. Section 82015. Being neither income nor contributions, the recipient has no reporting obligation. This is the rationale used by the Commission in the opinion requested by Kenneth Cory, 1 FPPC Opinions 137 (No. 75-094-C, Oct. 1, 1975), when it held that an elected official does not have to report tickets he receives to another official's fundraising dinner. A second reason for not requiring the recipient to report receipt of travel expenses is that these expenditures are fully reported by the committee. To require the recipient to report them as well results in duplicative reporting.

When payments by a committee which go beyond reimbursements or payments for political travel expenses are involved -- payment of salary or consulting fees -- we have always advised the recipient to report the payments as income on his or her Statement of Economic Interests, even though they are also reported on the committee's campaign statement.

The rationale for the opposite advice, which we have also given on many occasions (particularly to individuals other than elected officials), is that under the Act payments for travel are

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income or gifts, and that the reasons for allowing a candidate not to report them on his or her Statement of Economic Interests do not necessarily apply to other persons. For one thing, a candidate has to sign his or her campaign statement; other recipients of travel expenses do not sign the campaign statement.

The only area in which our advice is consistent is with respect to tickets to fundraising dinners. No one ever has to report receipt of such a ticket as income or as a gift because the Commission has decided they have no real value. However, unlike tickets to fundraising dinners, other travel, lodging and meals have as much value when provided in the course of a political campaign as they do other situations where they are clearly reportable. In fact, in the Cory Opinion, at page 139, fn. 5, the Commission suggested that while a political dinner given to a high ranking elected official is not a gift, other types of payments to an elected official who attends another candidate's fundraising dinner may be reportable as either income or as contributions.

At present, both our advice and the actual reporting practices are uncertain. Some staff members report payments for travel expenses; other do not. Some only report the payments when they receive a cash advance or reimbursement, but do not report if the campaign pays the expenses directly. We have advised elected or high ranking officials that they do not have to report receipt of plane travel when they go to make an appearance at a political event (even if the plane travel is provided by a contributor to the event) but that a campaign staffer or an aide to the candidate should report such travel payments as income.

It would be very helpful if the Commission would direct the staff to provide uniform advice in this area. Possible advice is described below:

(1) No one ever has to report payments for personal political travel expenses received from committees. This would include travel, meals and lodging. It would not matter whether the committee gave the person an advance, paid for the expenses directly or reimbursed the person, or whether a third party contributed the travel to the committee.

If this advice is adopted, it is necessary to decide the types of committees to which it applies: Candidates' committees, caucus committees, party committees, ballot measure committees, PACs, independent expenditure committees.

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(2) Elected officials do not have to report payments for political travel expenses from committees. (Again, the Commission may want to limit the types of committees to which this applies.) Persons other than elected officials have to report such payments (however received) as income (with the exception of tickets to fundraising dinners).

(3) Elected officials do not have to report payments for travel from their own controlled committees. Elected officials have to report receipt of travel expenses not paid for by their own controlled committees (except tickets to fundraising dinners). Everyone else reports all travel expenses (except fundraising dinners).

There are other possible variations which would be more difficult to explain and apply, such as distinguishing between cash reimbursements and direct payments by committees, or distinguishing between "high ranking" and other officials.

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