



# California Fair Political Practices Commission

June 23, 1989

Susan Foreman  
Director  
Office of Protocol and  
International Relations  
1121 L Street, Suite 1000  
Sacramento, CA 95814

Re: Your Request for Informal Assistance  
Our File No. I-89-323

Dear Ms. Foreman:

You have been have been authorized by Senator Roberti to request advice concerning the reporting requirements under the Political Reform Act (the "Act").<sup>1</sup> We do not have sufficient facts to provide specific advice to your question; accordingly, we will provide only general guidance. This letter is considered informal assistance pursuant to Regulation 18329(a) (copy enclosed.)<sup>2</sup>

## QUESTIONS

1. If a senator is invited to a foreign country to give a speech or to participate in a panel or seminar on a California governmental/legislative subject, does the cost of the Senator's round-trip airfare have to be reported as a gift?

2. If the senator is going to extend his stay beyond the time of the seminar at his own expense and is going to be doing other things unrelated to the seminar, will this affect the reporting of the round-trip airfare for purposes of the Act?

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<sup>1</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. Section 83114; Regulation 18329(c)(3).

3. What is the meaning of "reasonable subsistence in connection therewith" as set forth in Section 85400?

4. Does a senator have to report as a gift the hotel room, local transportation and meal expenses of the day before and the day of the speech, panel or seminar?

#### CONCLUSIONS

1 and 2. The out-of-state round-trip air travel must be reported. If it is in connection with a speech or participation in a panel or seminar, it may be reported as an honorarium. Alternatively, it may be reported as a gift or as income, depending upon whether or not full and adequate consideration was provided in exchange.

3. "Reasonable subsistence" means food and necessary accommodations provided in connection with the event.

4. All meals must be reported, except for (1) food and beverages provided at the event at which the senator speaks, participates in a panel or seminar or performs a similar service, and (2) other necessary meals provided directly in connection with the event. Local travel expenses in the foreign country must be reported. The only hotel accommodations which need not be reported are necessary accommodations provided directly in connection with the event. Whether meals and lodging provided the day before and the day of the event are "necessary" and "provided directly in connection with the event" must be determined on a case-by-case basis.

#### FACTS

You are currently making arrangements for two legislative trips, and you wish to clarify the general rules regarding the reporting requirements with respect to reimbursements of travel expenses and per diem relating to out-of-state travel. You have indicated that the trips may involve extended stays by the elected officers paid for at their own expense.

#### ANALYSIS

As a general rule, an elected state officer must report third-party payments for travel, meals and accommodations. Depending upon the circumstances, these payments may be reported as gifts, honoraria or income. If the filer does not choose to report such payments as honoraria, they must be reported as gifts unless it is clear from all surrounding circumstances that the services provided were of equal or greater value than the payment received. In the latter case, the payments will be reported as income. (Regulation 18728, copy enclosed.) An elected officer may not accept gifts or honoraria of more than \$1,000 from any single source (other than payments for travel and reasonable subsistence) in connection with a speech, article, or published

work on a subject relating to the governmental process. (Section 85400.)

There are three exceptions to the general rules concerning reporting of travel, meals and accommodations provided directly in connection with an event at which an official makes a speech. First, travel within California is not reportable if provided in connection with a speech or similar event. (Regulation 18728(a).) Second, necessary accommodations provided directly in connection with the event need not be reported. (Regulation 18728(a).) We have advised that the term "accommodations" includes lodging and meals. (Puglia Advice Letter, No. A-77-464; Chel Advice Letter, No. A-78-264, copies enclosed.) Third, free admission, food, beverages and similar nominal benefits provided at the speaking event need not be reported. (Regulation 18728(a).) It should be noted that Regulation 18728, which contains these exceptions to the reporting requirements, contemplates that the official will provide a certain level of service at a structured event. (Smith Advice Letter, No. A-77-257, copy enclosed.)

Payments for travel, meals and accommodations not in conjunction with a speech or similar activity must be reported either as income or gifts, again depending upon whether or not full and adequate consideration was given by the elected officer. Payments of income aggregating \$250 or more from a single source must be reported. Payments which are gifts or honoraria must be reported when the aggregate value from a single source is \$50 or more. (Section 87207; Regulation 18728.)

You have not provided specific information concerning the legislative trips being planned. However, certain general observations can be made. The only travel which is not reportable is intrastate travel in connection with a speech or similar event. (Regulation 18728; Swendiman Advice Letter, No. A-85-039, copy enclosed.) Since the trips involved here are out-of-state, payments received for travel costs must be reported. This would include round-trip air travel and the local travel expenses in the foreign countries.

Payments for food and beverages provided at the event at which the senator speaks, participates in a panel or seminar or performs a similar service are not reportable. The only other food and hotel accommodations which do not have to be reported are those provided directly in connection with the event. (Regulation 18728.) Whether or not food and lodging for the night before and the day and night of the event are "necessary" would be decided on a case-by-case basis. At a minimum, lodging the night before or the night after a speaking event when out-of-town travel is necessary generally would meet this standard. Whether a second night's lodging also is necessary would depend on circumstances such as the time and length of the event. For example, an event which is scheduled only in the morning or afternoon ordinarily would require only one night's lodging. In contrast, an all-day event could require lodging the night before and the night of the

event. Similar reasoning would apply to determine whether meals are "necessary."

You have also requested information regarding the definition of "reasonable subsistence" as used in Section 85400 and in Regulation 18540.<sup>3</sup> "Reasonable subsistence" would include reasonable payments for necessary meals and lodging provided directly in connection with the speech. Section 85400 and Regulation 18540 provide that these payments are not included in a calculation of the value of a gift or honorarium received. As discussed above, Regulation 18728 also exempts these payments from the reporting requirements.

If you have any questions, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel



By: Margaret W. Ellison  
Counsel, Legal Division

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Enclosures

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<sup>3</sup> Adopted by the Commission at its June 6, 1989 meeting but currently pending review by the Office of Administrative Law.



California Legislature  
Senate Rules Committee

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Chairman

MEMBERS  
WILLIAM A. CRAVEN  
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HENRY J. MELLO  
NICHOLAS C. PETRIS

Office of Protocol and International Relations

Susan Foreman, Director

May 23, 1989

Ms. Lilly Spitz  
Legislative Coordinator  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95804-0807

Dear Ms. Spitz:

Pursuant to our conversation of last month, I would like to verify my understanding of your answer to the following two questions:

I asked you, "if a Senator is invited to a foreign country to give a speech or to participate in a panel or seminar on a California governmental/legislative subject, does the cost of the Senator's round-trip airfare have to be reported as a gift?" You said that it does not have to be reported as a gift. Further, I asked you, "if the Senator is going to extend his stay beyond the time of the seminar and is going to be doing other things unrelated to the seminar (some business-related and some not business-related) is the full round trip airfare cost still exempt from being reported as a gift?" You said that the full round-trip airfare cost does not have to be reported as a gift.

I want to be absolutely certain about this, since Senators who are invited to give a speech or participate in a panel or seminar in a foreign country generally do, understandably, extend their stay beyond just the time of the specific event to which they've been invited. In most instances, the cost for the Senator's stay-over is not paid by the event's sponsor.

In addition I have a question regarding language in your proposed regulation which reads: "reasonable subsistence directly in connection with making a speech or participating [as a featured speaker]\* in a panel or seminar on a subject relating to the governmental process are not gifts for purposes of this section." How is "reasonable subsistence" defined? Is it safe to assume that a Senator does not have to report as a gift the hotel room, local transportation and meal expenses of the day before and the day of the speech, panel or seminar?

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Since I currently am working on arrangements for two legislative trips, I would appreciate your expeditious response.

Sincerely,

*Susan Foreman*

SUSAN FOREMAN  
Director



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Senate Rules Committee

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Office of Protocol and International Relations

Susan Foreman, Director

May 23, 1989

Ms. Lilly Spitz  
Legislative Coordinator  
Fair Political Practices Commission  
P. O. Box 807  
Sacramento, CA 95804-0807

RECEIVED  
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OFFICE OF PROTOCOL AND INTERNATIONAL RELATIONS

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Since I currently am working on arrangements for two legislative trips, I would appreciate your expeditious response.

Sincerely,

*Susan Foreman*

SUSAN FOREMAN  
Director



# California Fair Political Practices Commission

May 25, 1989

Susan Foreman  
Office of Protocol and  
International Relations  
1121 L Street, Suite 1000  
Sacramento, CA 95814

Re: Letter No. 89-323

Dear Ms. Foreman:

Your letter requesting advice under the Political Reform Act was received on May 25, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John G. McLean", is written over the typed name of Kathryn E. Donovan.

for  
Kathryn E. Donovan  
General Counsel

KED:plh