



California Fair Political Practices Commission

July 17, 1989

Honorable Maxine Waters
Assemblywoman, 48th District
State Capitol
P. O. Box 942849
Sacramento, CA 94249-0001

Re: Your Request for Advice
Our File No. A-89-364

Dear Assemblywoman Waters:

You have requested advice with respect to interpretation of provisions of the Political Reform Act (the "Act").¹ Specifically, you have requested advice concerning the limitations on and the reporting of payments received in connection with a speaking engagement.

QUESTIONS

1. Would the a payment received in connection with a fellowship award be considered an "honorarium" under the Act?
2. If the payment is considered an honorarium, would the amount of \$2,500 be in excess of the amount an elected officer can receive in a calendar year for honoraria from a single entity?
3. If the payment is considered a fee for services rather than a gift or honorarium, what limitations apply?

CONCLUSIONS

1. A payment received in connection with a fellowship award would be considered an "honorarium" under the Act if it is received for making a speech, participating in a panel or seminar, or writing an article or other published work.

¹ 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.

2. An honorarium for a speech, article or published work on the governmental process received by an elected officer is limited to \$1,000 from a single source in a calendar year, excluding actual travel expenses and reasonable subsistence directly in connection therewith.

3. If the payment is a fee for services rather than a gift or honorarium, the \$1,000 limit does not apply. However, an elected officer who claims the payment as "income", instead of a gift or honorarium, has the burden of proving that he or she provided consideration of equal or greater value than the payment received.

FACTS

You have been invited by the University of California at Santa Cruz to receive the Cowell College Minority Fellowship, which is described as an academic fellowship. According to the information provided, you have been requested to provide one full day of speaking engagements at the university. The proposed schedule sets forth the following activities:

1) A dialogue and meeting with student leaders of color active in student organizations for educational rights and multi-cultural diversity.

2) Public address to the UCSC Student Community and faculty at large at Cowell College and award ceremony of the Cowell Fellowship.

The fellowship award includes a payment to you in the amount of \$2,500. The letter of invitation which you enclosed categorizes this payment as an "honorarium."

ANALYSIS

Section 85400 provides as follows:

No elected officeholder shall accept any gift or honorarium for any speech, article, or published work on a subject relating to the governmental process from any single source which is in excess of one thousand dollars (\$1,000), in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith.

Section 85400.

As used in Section 85400, the term "honorarium" means any payment received for making a speech, participating in a panel or

seminar, or writing an article or other published work. (Regulation 18540(b), copy enclosed.)² "Speech" refers to a public address, oration, or other form of substantive oral presentation. (Regulation 18540(d).) "Governmental process" is defined as including activities related to the official duties of the elected officer, or the functions, programs and policies of government. (Regulation 18540(e).)

According to the letter of invitation that you provided, it appears that the \$2,500 payment that you would receive from the university would be for making a public address and/or other substantive oral presentations. If your speech or presentation relates to your official duties or to the functions, programs and policies of government, the payment would be subject to the limitations set forth in Section 85400.

Section 85400 limits payments for speeches on the governmental process, whether denominated as gifts or honoraria, to \$1,000 in any calendar year from any single source, excluding reimbursement for actual travel expenses and reasonable subsistence in connection therewith. Therefore, the maximum honorarium that you could receive would be \$1,000, excluding reimbursement for travel and reasonable subsistence. "Reasonable subsistence" means reasonable payments for necessary meals and lodging provided directly in connection with the speech. (Foreman Advice Letter, No. I-89-323, copy enclosed.)

The fact that you would be making a series of oral presentations does not alter this result. An elected officer may not accept more than a total of \$1,000 for any speech or speeches given at a single assemblage. A single assemblage includes all events scheduled for a single conference, convention or similar gathering. (Regulation 18540(g).)

If the fellowship payment is not really an honorarium, but, rather, a fee for services, the \$1,000 limitation of Section 85400 would not apply. Generally a payment for speaking on the governmental process is presumed to be a gift. If you claim that the payment is income, you will have the burden of proving that the consideration you provided was of equal or greater value than the payment received. (Regulation 18540(c).)

Notwithstanding the above presumption, subsection (g)(2) of Regulation 18540 provides that payments received from a bona fide educational institution pursuant to a contract for teaching are considered "income." Public universities such as the University of California are specifically included as bona fide institutions. (Regulation 18540(g)(2).) We do not have sufficient information about the fellowship program to determine whether it would qualify

² Regulation 18540 was adopted by the Commission on June 6, 1989, and is currently pending review by the Office of Administrative Law.

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as a teaching contract. If it is a contract for teaching, the payment can be considered "income" and the \$1,000 limitation of Section 85400 will not apply.

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

Sincerely,

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures

REPLY TO:

SACRAMENTO ADDRESS
STATE CAPITOL
P.O. BOX 942649
SACRAMENTO, CA 94249-0001
(916) 445-2363

DISTRICT OFFICE
7900 SOUTH CENTRAL AVE
LOS ANGELES, CA 90001
(213) 590-7371

Assembly
California Legislature

MAXINE WATERS

ASSEMBLYWOMAN, FORTY-EIGHTH DISTRICT

DEMOCRATIC CAUCUS CHAIRWOMAN

COMMITTEES
GOVERNMENTAL ORGANIZATION
JUDICIARY
NATURAL RESOURCES
WAYS AND MEANS
JOINT LEGISLATIVE BUDGET COMMITTEE
SUBCOMMITTEE:
CHAIRWOMAN, SUBCOMMITTEE #4
ON STATE ADMINISTRATION

June 12, 1989

Ms. Lilly Spitz
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Dear Lilly:

I have enclosed a copy of an invitation from UC Santa Cruz asking me to accept their invitation to become a Cowell College Minority Fellowship with an "honorarium" of \$2,500. You can see from the enclosed letter the tasks they are asking me to fulfill as a recipient of this award.

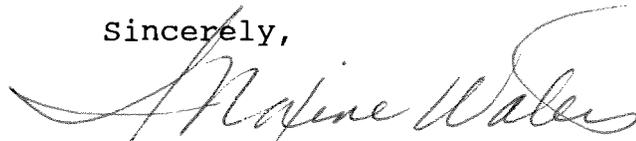
My question is whether or not this fellowship would be considered an honorarium under Proposition 73 and any regulations the Commission has adopted to interpret that section of Proposition 73?

If this fellowship is considered an honorarium, is the amount of \$2,500 then in excess of the limit one can receive in a calendar year from a single entity?

If this fellowship is not an honorarium, but a fee for services, what limitations then apply?

Thank you in advance for your early response to this letter.

Sincerely,



MAXINE WATERS
ASSEMBLYWOMAN, 48th District

MW/RC/afc

enclosure

UNIVERSITY OF CALIFORNIA, SANTA CRUZ

BERKELEY • DAVIS • IRVINE • LOS ANGELES • RIVERSIDE • SAN DIEGO • SAN FRANCISCO



SANTA BARBARA • SANTA CRUZ

MAY 8 1989

COWELL COLLEGE

SANTA CRUZ, CALIFORNIA 95064

Assemblywoman Maxine Waters
7900 South Central Ave.
Los Angeles, California

Dear Assemblywoman Maxine Waters:

We are pleased to invite you to receive a University of California Academic Fellowship: the Cowell College Minority Fellowship, with an honorarium of \$2,500 awarded by Cowell's Provosts John Lynch and Mary Kay-Gamel.

Past Fellows include: artist Robert Blackburn, actor/musician Daniel Valdez, writer Michelle Cliff, legislator Michael Woo, and actor Bruce A. Young to the campus in previous years. Each Fellow found the experience personally rewarding in contributing substantially to the academic life of our campus community. The colleges and the local community have received the Fellows most warmly and with considerable enthusiasm.

The format of the visit is quite flexible. Fellows normally stay on campus as guests of the college for two to five weekdays. During this period, they meet informally with students and faculty in classes. They usually present a lecture in the college and, if they wish, in the local community. Most of all, Fellows visit and talk with students and faculty on an informal basis in and around the college.

However recognizing your busy schedule as a legislator and state chair of the California Rainbow Coalition, we would hope you could provide at least one full day of speaking engagements at the university. Here is a proposed schedule:

- 1) A dialogue and meeting with student leaders of color active in student organizations for educational rights and multi-cultural diversity.
- 2) Public address to the UCSC Student Community and faculty at large at Cowell College and award ceremony of the Cowell Fellowship to be presented by Provosts John Lynch and Mary Kay-Gamel, and African/Black Student Association.

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MEMORIAL DAY

We would suggest a visit on the week of May 22 or 29, as we are trying to avoid vacations and encroaching on final exam weeks. We very much hope you will take the time off in your busy schedule to accept this fellowship and engage in rewarding discussion with our community.

Sincerely,



John Lynch
Mary Kay Gamel
Provosts of Cowell College

Arrangements should be made through the Student Activities Office of Cowell College, UCSC; please contact Steven Morozumi and Angie Christman, Student Activities Officers at 408 429-2255 or evenings 408 423-9646.



California Fair Political Practices Commission

June 19, 1989

Honorable Maxine Waters
Assemblywoman, 48th District
State Capitol
P.O. Box 942849
Sacramento, CA 94249-0001

Re: Letter No. 89-364

Dear Assemblywoman Waters:

Your letter requesting advice under the Political Reform Act was received on June 16, 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 "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh



California Fair Political Practices Commission

June 21, 1989

Bette Racki
Deputy City Clerk
23 Russell Blvd.
Davis, CA 95616

Re: Combined Campaign Report
Our File No. A-89-365

Dear Ms. Racki:

This is to confirm advice provided to you on June 19, 1989, regarding the campaign disclosure provisions of the Political Reform Act.^{1/} This letter constitutes written advice under Section 84205, which states:

The Commission may by regulation or written advice permit candidates and committees to file campaign statements combining statements and reports required to be filed by this title.

A ballot measure election has been scheduled for August 15, 1989, in connection with two city ordinances. Because the first pre-election statement due in connection with the election (Section 84200.8) and the semi-annual statement due for the first six months of 1989 (Section 84200) cover almost identical periods, we believe it is appropriate for committees primarily formed to support or oppose the measure(s) to combine those two reports. Therefore, campaign statements in connection with the August 15, 1989, election should be filed on the following schedule:

<u>Type of Statement</u>	<u>Period Covered</u>	<u>Filing Deadline</u>
1st Pre-Election (for Aug. election) combined with Semi-Annual	Jan. 1 - July 1	July 6
2nd Pre-Election for Aug. election	July 2 - July 29	August 3
Semi-Annual	July 30 - Dec. 31	January 31, 1990

^{1/}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.

Bette Racki
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Candidates and committees not involved in the August 15, 1989, election will not use this filing schedule, but will use the regular dates set out in the "Information Manual on Campaign Disclosure Provisions of the Political Reform Act."

Please call me at (916) 322-5662 if you have any questions.

Sincerely,

Kathryn E. Donovan
General Counsel

Carla Wardlow

By: Carla Wardlow
Assistant Chief, Technical
Assistance & Analysis Division