



# California Fair Political Practices Commission

February 22, 1990

L.G. Statham  
1008 10th Street, #514  
Sacramento, CA 95814

Re: Your Request for Informal Assistance  
Our File No. I-89-690

Dear Ms. Statham:

You have requested assistance with respect to the application of various provisions of the Political Reform Act (the "Act")<sup>1</sup>. In our telephone conversation of January 10, 1990, you clarified that you are requesting assistance on behalf of your husband, Assembly Member Stan Statham. Because your questions are general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

## QUESTIONS

1. Can an elected officer who is one of three directors of a California nonprofit public benefit corporation make an interest-free loan to the corporation using restricted<sup>3</sup> or nonrestricted

<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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

<sup>3</sup> "Restricted funds" is a term which was commonly used to refer to campaign funds received by a candidate prior to January 1, 1989 in amounts in excess of the contribution limits imposed by Proposition 73, because use of those funds was restricted by Section 85306. Section 85306 has been declared unconstitutional and unenforceable. (Service Employees International Union, AFL-CIO, et al. v. Fair Political Practices Commission, Case No. 89-0433 LKK-JFM. Effective September 13, 1989, candidates may use all of their pre-1989 contributions to support their own candidacy in future elections after January 1, 1989. As a result of this ruling, the term "restricted funds" is no longer applicable.

campaign funds?

2. Can the elected officer make a direct donation to this corporation using restricted or nonrestricted campaign funds?

3. Are there any potential conflicts that might arise from the elected officer's involvement with the corporation?

4. Can this corporation make an expenditure for travel or travel related services to or on behalf of an elected officer who is a director?

5. Can this corporation make an expenditure for travel or travel related services to or on behalf of an elected officer who is not a director?

6. Would any of the answers to the above questions be different if there were 3 public directors, 1 elected officer, and 1 spouse of an elected officer?

7. Would any of the answers to the above questions be different if there were 1 public director, 1 elected officer, 1 spouse of the elected officer and 2 employees of the elected officer/directors?

#### CONCLUSIONS

1 & 2. An elected officer may make a loan or donation to a bona fide nonprofit public benefit corporation which is tax-exempt under Section 501(c)(3) of the Internal Revenue Code provided that no substantial part of the proceeds will have a material financial effect on the candidate, his or her immediate family, or his or her campaign treasurer, and the donation or loan is reasonably related to a political, legislative or governmental purpose.

3. We can only address conflict-of-interest issues with respect to specific decisions. In general, conflicts could arise if the nonprofit corporation is a source of income to the elected officer or his family and a governmental decision to be made by his agency will materially affect the corporation in a manner distinguishable from the effect on the public generally.

4 & 5. The corporation may pay travel expenses for the elected officer/director or another elected officer provided the payments are not made for political purposes so as to constitute contributions. If the payments constitute contributions, the corporation could become a controlled committee.

6 & 7. The composition of the board of directors is relevant in determining whether the corporation is controlled by the candidate. This must be determined on a case-by-case basis. The

more public members on the board of directors, the less likely the corporation will be considered to be controlled by the candidate.

#### FACTS

An elected officer is one of the three directors of a California not-for-profit corporation. The spouse of the elected officer works for the corporation. There are two public members. This corporation will not lobby, is non-partisan, and will make no expenditures on behalf of any candidate or initiative. This corporation is for educational purposes only via educational seminars and conferences. Funds will be raised from corporations, lobbyist employers and private individuals. All funds will be placed into the corporation account. The elected officer/director will not be voting on any governmental decisions having a direct financial benefit to the corporation.

#### ANALYSIS

#### Use of campaign funds to make a loan or donation to a nonprofit organization.

Section 85803 of the Act provides as follows:

Campaign funds may be used to make donations or loans to bona fide charitable, educational, civic, religious, or similar tax-exempt, nonprofit organizations, where no substantial part of the proceeds will have a material financial effect on the candidate, elected officer, member of his or her immediate family, or the campaign treasurer, and where the donation or loan bears a reasonable relation to a political, legislative, or governmental purpose.

(Emphasis added.)

Section 85803 is, by its terms, applicable to use of campaign funds for charitable purposes whether the use of funds is categorized as a donation or as a loan. Therefore, the elected officer could make either a loan or a donation to the corporation if the transaction otherwise complies with the requirements of Section 85803.

In order to fall within Section 85803, the loan or donation must be to a bona fide charitable, educational, civic, religious or similar nonprofit, tax-exempt organization. In our conversation of January 10th, you indicated that the corporation is to be formed as a nonprofit, tax-exempt public benefit corporation, qualifying under Section 501(c)(3) of the Internal Revenue Code. Your letter indicates that the corporation will be for educational purposes only. We believe that the corporation therefore meets that test of a qualifying nonprofit organization.

Section 85803 also provides that no substantial part of the proceeds of the loan or donation may have a material financial

effect on the elected officer, his or her immediate family, or his or her campaign treasurer. You have not indicated that the campaign treasurer will be involved in the organization or will otherwise benefit from the proceeds of the loan or donation to the organization. Therefore, we will focus on the elected officer and his or her immediate family.

We believe that an appropriate test to determine whether an official or his or her immediate family is materially affected is the test set forth in subdivision (a)(4) of Regulation 18702.1 (copy enclosed). That section provides as follows:

The decision will result in the personal expenses, income, assets (other than interest in real property), or liabilities of the official or his or her immediate family increasing or decreasing by at least \$250.

Therefore, if the personal expenses, income, assets or liabilities of the elected officer or his or her immediate family will increase or decrease by \$250 from the proceeds of the loan or donation of campaign funds, the elected officer cannot loan or donate the campaign funds to the organization.

Finally, Section 85803 requires that the donation or loan bear a reasonable relation to a political, legislative, or governmental purpose. Whether this standard is met depends on the specific facts of the donor candidate's situation.

Payment of travel expenses of elected officers.

Your questions relating to payment of travel expenses of elected officers raise several issues under the Act. Because we are not analyzing any specific travel expense, we will simply try to provide you with a general overview of the issues raised.

First of all, as stated above, if \$250 or more of travel expenses of an elected officer will be paid from proceeds of a loan or donation to the corporation from that elected officer, the loan or donation violates the personal use prohibition of Section 85803. Alternatively, if proceeds of a loan or donation to the corporation by an elected officer are earmarked to pay travel expenses of another elected officer, this could violate Section 85304, which prohibits transfers of contributions between candidates.

It is also possible that payment of travel or other expenses for the elected officer could result in a finding that the nonprofit corporation is a controlled committee of that elected officer. (Section 82016.) This could result if the payments of travel expenses were determined to be contributions to the elected

officer and the elected officer controlled the corporation.<sup>4</sup> The payment of travel expenses would not be contributions if paid to other comparable officers or directors of the nonprofit corporation as well as to the elected officer in conjunction with travel on the nonprofit corporation's business, rather than for any political purpose.

Representation on the board of directors.

The composition of the board of directors of the nonprofit corporation relates to the extent to which the elected officer exercises control over the organization, either directly or indirectly through relatives or agents. Whether an organization is controlled by an elected officer must be determined on a case-by-case basis. Certainly the greater the number of "public" directors who are not the elected officer nor agents or relatives of the elected officer, the less likelihood that the organization will be deemed to be controlled by the elected officer.

For example, your first description of the corporation, as having one director who is an elected officer and two directors who are "public" members, is less likely to be found to be controlled by the elected officer than the situation posed in your Question 7 where only one out of five directors is a "public" member.

However, even in your first example of one elected officer/director and two "public" directors, it is possible that the elected officer in fact directs and controls the activities of the organization.

Conflicts of interest.

You have posed a very general question as to whether or not the proposed corporation would create any potential conflicts of interest. One of the duties of the Commission is to advise elected officers with respect to their duties under the Act. (Section 83114; Regulation 18329, copy enclosed.) The Act imposes restrictions upon the ability of public officials to participate in or otherwise attempt to influence decisions which may involve or appear to involve conflicts of interest. (Sections 87100-87500.) The conflict-of-interest prohibitions apply to members of the Legislature although they are specifically excluded from the conflict-of-interest penalty provisions. (Section 87102.)

However, the advice provided by staff is generally provided on a case-by-case basis as decisions arise. We cannot advise you in the abstract. Conflicts could arise in relation to the

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<sup>4</sup> At its March meeting, the Commission will be examining the circumstances in which nonprofit corporations may become controlled committees. In accordance with your request, we have previously provided you with a copy of proposed Regulation 18217.

nonprofit corporation. For example, the elected officer could not participate in or use his official position to influence a decision which would directly or indirectly have a material financial effect upon the nonprofit corporation, distinguishable from the affect on the public generally, if the corporation were a source of income or gifts to the elected officer of \$250 or more within the 12 months immediately proceeding the decision. (Section 87103.) We would need information as to the specific decision to be made in order to determine if it might create a conflict of interest for the elected officer.

I trust that this letter has provided you with the information you requested. If you have any further 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

December 10, 1989

FPPC  
Legal Division  
Sacramento, California

FPPC  
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Facts: An elected official is one of three directors of a California not-for-profit corporation. The spouse of the official works for the corporation. There are two public members. This corporation will not lobby, is non-partisan, and will make no expenditures on behalf of any candidate or initiative. This corporation is for educational purposes only via educational seminars/conferences. Funds will be raised from corporate America, lobbyists employers and private individuals. All funds will be placed into the not-for-profit corporation account. This elected official/director will not be voting on any issues having a direct financial benefit to this corporation.

Question 1: Can the elected official/director make a non interest bearing loan to this corporation using restricted and/or non restricted campaign funds?

Question 2: Can the elected official/director make a direct non-repayable gift/donation to this corporation using restricted and/or non restricted campaign funds?

Question 3: Do you see any potential conflicts that might arise?

Question 4: Can this not-for-profit corporation make an expenditure for travel or travel related services to or on behalf of an elected official who is a director?

Question 5: Can this not-for-profit corporation make an expenditure for travel or travel related services to or on behalf of an elected official who is not a director?

Question 6: Would any of the answers to the above questions be different if there were 3 public directors, 1 elected official, 1 spouse of elected official?

Questions 7: Would any of the answers to the above questions be different if there were 1 public director, 1 elected official, 1 spouse of elected official, 2 employees of the elected official/director?

Please respond by question number.

Thank you for your assistance.

L.G. Statham  
1008 10th Street, #514  
Sacramento, CA 95814  
(916) 425-1125



# California Fair Political Practices Commission

December 18, 1989

L. G. Statham  
1008 - 10th Street, #514  
Sacramento, CA 95814

Re: Letter No. 89-690

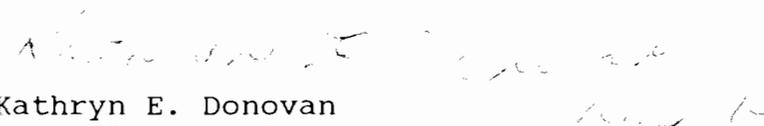
Dear Ms. Statham:

Your letter requesting advice under the Political Reform Act was received on December 12, 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,

  
Kathryn E. Donovan  
General Counsel

KED:plh