



California Fair Political Practices Commission

March 13, 1992

Honorable Richard M. Sims III
Court of Appeal, Third District
914 Capitol Mall
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-92-83

Dear Justice Sims:

You have requested advice concerning the conflict of interest disclosure provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Are you required to disclose on your annual statement of economic interests (Form 721) travel reimbursements you have received from The Rutter Group?

CONCLUSION

The travel reimbursements must be reported as income on your statement of economic interests.

FACTS

Pursuant to a contract with The Rutter Group, you participated with other judges on various panels to discuss changes in the law for the benefit of persons who paid to attend the discussions. The Rutter Group paid your expenses for travel to each location where the panel discussions were held. During our telephone conversation on February 13, 1992, you stated that you also received compensation from The Rutter Group for participating in the panel discussions.

^{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.

ANALYSIS

The Act requires state and local public officials, including judges, to file annual reports disclosing certain personal financial interests. (Section 87200-87210.) Among other things, judges are required to disclose "income" totaling \$250 or more in a calendar year received from any source which is located in or doing business in the state of California. (Sections 82030, 82035, 87207.) "Income" is defined, in part, as:

...a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse....

Section 82030.
(Emphasis added.)

By regulation, the Commission has established the following exception from disclosure for certain types of travel and other benefits received by public officials:

...free admission, food, beverages and similar nominal benefits provided to a filer at an event at which he or she speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel and for necessary accommodations provided directly in connection with the event are not payments and need to be reported by the filer.

Regulation 18728(a).^{2/}

However, we do not believe the regulation was intended to apply to situations in which an official contracts to provide ongoing services, or to participate in a series of panel discussions outside the scope of his or her official duties, for which the official receives compensation. Therefore, as I advised you on February 13, 1992, you must include payments made by The

^{2/} Regulation 18728 will be replaced later this year by new regulations concerning honoraria, gifts, and travel. Please contact this office prior to completing your statement of economic interests for 1992 if you receive travel or other benefits during 1992 which are covered by Regulation 18728.

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Rutter Group for travel costs when calculating the amount of income received from the Group. The income, including travel, should be reported on Schedule D (Income (Other Than Gifts And Honoraria)) of Form 721.

Please contact me at (916) 322-5662 if you have additional questions or need additional information.

Sincerely,

Scott Hallabrin
Acting General Counsel

Carla Wardlow

By: Carla Wardlow
Acting Division Chief
Technical Assistance and
Analysis Division

ADVICE LETTER # A-92-83

REQUESTER: Richard Sims III

This letter was written by: Carla Wardlow

The 21 working-days expires: 3/4/92 ^{§ requested add'l info and} _{provided telephone advice}

However, a response has been requested by: on 2/13

Upon review, return to: Carla or Hilda

DIVISION CHIEF, TA&A

[Signature] APPROVED

Comments to Executive Director and Chairman: _____

GENERAL COUNSEL:

[Signature] APPROVED

- Without change
- See changes noted in letter

General Comments/Thoughts: _____

NOT APPROVED

Reasons/Comments: _____

EXECUTIVE DIRECTOR:

[Signature] APPROVED

- Without change
- See changes noted in letter

General Comments/Thoughts: _____

NOT APPROVED

Reasons/Comments: _____

March --, 1992

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QUESTION

Are you required to disclose on your annual statement of economic interests (Form 721) travel reimbursements you have received from The Rutter Group?

CONCLUSION

The travel reimbursements must be reported as income on your statement of economic interests.

FACTS

Pursuant to a contract with The Rutter Group, you participated with other judges on various panels to discuss changes in the law for the benefit of persons who paid to attend the discussions. The Rutter Group paid your expenses for travel to each location where the panel discussions were held. During our telephone conversation on February 13, 1992, you stated that you also received compensation from The Rutter Group for participating in the panel discussions.

^{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.

ANALYSIS

The Act requires state and local public officials, including judges, to file annual reports disclosing certain personal financial interests. (Section 87200-87210.) Among other things, judges are required to disclose "income" totaling \$250 or more in a calendar year received from any source which is located in or doing business in the state of California. (Sections 82030, 82035, 87207.) "Income" is defined, in part, as:

...a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse....

Section 82030.
(Emphasis added.)

By regulation, the Commission has established the following exception from disclosure for certain types of travel and other benefits received by public officials:

...free admission, food, beverages and similar nominal benefits provided to a filer at an event at which he or she speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel and for necessary accommodations provided directly in connection with the event are not payments and need to be reported by the filer.

Regulation 18728(a).^{2/}

However, this regulation and subsequent advice provided pursuant to the regulation indicate that the exception from disclosure for travel and accommodations received in connection with speeches or participation in panel discussions or seminars was intended to cover such services provided by an official as a part of his or her official duties, in situations where the official's agency might otherwise pay travel costs. We do not

^{2/} Regulation 18728 will be replaced later this year by new regulations concerning honoraria, gifts, and travel. Please contact this office prior to completing your statement of economic interests for 1992 if you receive travel or other benefits during 1992 which are covered by Regulation 18728.

believe the regulation was intended to apply to situations in which an official contracts to provide ongoing services, or to participate in a series of panel discussions outside the scope of his or her official duties, for which the official receives compensation. Therefore, as I advised you on February 13, 1992, you must include payments made by The Rutter Group for travel costs when calculating the amount of income received from the Group. The income, including travel, should be reported on Schedule D (Income (Other Than Gifts And Honoraria)) of Form 721.

Please contact me at (916) 322-5662 if you have additional questions or need additional information.

Sincerely,

Scott Hallabrin
Acting General Counsel

By: Carla Wardlow
Assistant Division Chief
Technical Assistance and
Analysis Division



RICHARD M. SIMS III
ASSOCIATE JUSTICE

STATE OF CALIFORNIA
Court of Appeal
THIRD APPELLATE DISTRICT
STATE LIBRARY AND COURTS BUILDING
914 CAPITOL MALL
SACRAMENTO 95814

Jan 27 1992
32
(916) 654-0117

January 28, 1992

Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804-0807

Re: 1991-92 Statement of Economic Interests

Ladies and Gentlemen:

I previously received from you an opinion letter indicating that I am not subject to the prohibition on honoraria.

I need further advice from you in order to complete my current Statement of Economic Interests. My situation is as follows:

Pursuant to a contract with The Rutter Group, I have participated with other judges on a panel which discusses changes in the law for the benefit of those (mainly attorneys) who pay to attend the panel discussions.

With respect to each location where the panel is produced, I have been furnished with travel either directly by The Rutter Group or by reimbursement to me. I am confident that these travel expenses constitute business expenses under the Internal Revenue Code. I am uncertain whether I have to disclose these travel expenses in my Statement of Economic Interests.

Could you please advise me at your earliest convenience whether I must disclose these travel expenses.

Should you need additional information I can be reached by telephone at 654-0117.

Thank you very much for your help.

Very truly yours,

Richard M. Sims III
Associate Justice

RMS:ss