

October 31, 2013

Elizabeth M. Calciano  
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Manhattan Towers  
1230 Rosecrans Ave., Suite 110  
Manhattan Beach, CA 90266

Re: Your Request for Advice  
**Our File No. A-13-130**

Dear Ms. Calciano:

This letter responds to your request for advice on behalf of Planning Commissioner Michael Stover regarding the honorarium, gifts, and travel payments provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTION

Is Commissioner Stover prohibited by the Act's gift and honoraria limits from accepting payments for airfare and lodging from the government of Taiwan?

### CONCLUSION

No. The payments for airfare and lodging are related to a governmental purpose and are provided by a foreign government, Taiwan. Therefore, Commissioner Stover is allowed to accept the payments under the travel exception provided in Section 89506. However, the gift is still reportable and may subject Commissioner Stover to a conflict of interest.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

## FACTS

The Planning Commissioner for the City of Chino Hills, Michael Stover, is also the President of the Osher Lifelong Learning Center affiliated with Cal State Fullerton, which is a volunteer position. This program “provides active, older adults with opportunities to continue learning in a university setting, to engage with peers, to serve our communities, and to support and enhance the activities of the University.” In this capacity, he has been invited to speak in Taiwan in March of 2014. The government of Taiwan will pay for his airfare and hotel accommodations.

## ANALYSIS

### *Honoraria*

Section 89502 provides:

“(a) No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.

“(b) (1) No candidate for elective state office, for judicial office, or for elective office in a local government agency shall accept any honorarium. A person shall be deemed a candidate for purposes of this subdivision when the person has filed a statement of organization as a committee for election to a state or local office, a declaration of intent, or a declaration of candidacy, whichever occurs first. A person shall not be deemed a candidate for purposes of this subdivision after he or she is sworn into the elective office, or, if the person lost the election after the person has terminated his or her campaign statement filing obligations for that office pursuant to Section 84214 or after certification of the election results, whichever is earlier.

“(2) Paragraph (1) shall not apply to any person who is a candidate as described in paragraph (1) for judicial office on or before December 31, 1996.

“(c) No member of a state board or commission and no designated employee of a state or local government agency shall accept an honorarium from any source if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

“(d) This section shall not apply to a person in his or her capacity as judge. This section shall not apply to a person in his or her capacity as a part-time member of the governing board of any public institution of higher education unless that position is an elective office.”

Section 89501 defines “honoraria” as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.”

The payments to speak at the international conference in Taiwan are prohibited by the honorarium prohibition. However, with respect to the travel payments, certain exceptions may apply.

### *Gifts*

The term “gift” is defined in Section 82028(a) as:

“Any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”<sup>2</sup>

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by public officials in three ways:

First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and any employee designated in his or her agency’s conflict-of-interest code, as adopted pursuant to Section 87300, if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interests. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency’s conflict-of-interest code as specified in the code (Section 87302(b)).

Finally, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18703.4.)

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<sup>2</sup> Section 82044 defines payment, in part, as any “rendering of ... services or anything else of value, whether tangible or intangible.”

As a planning commissioner, Commissioner Stover is subject to the provisions of Section 87200.

***Travel Payments, Advances and Reimbursements***

Travel costs paid for by a third party generally are reportable gifts or prohibited by the honoraria limit under the Act. Therefore, absent an exception, the value of transportation, lodging, and meals for the conference in Taiwan, would be considered reportable gifts or honoraria. (Section 82028; *Gault* Advice Letter, No. A-07-158.)

***Travel Payments, Advances and Reimbursements – Exceptions***

Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's gift limit, which is currently \$440, or the honoraria limit.

Section 89506(a), in relevant part, provides an exception from the gift and honoraria limits for certain travel payments:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either the following apply:

...

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institutions, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

Based upon the facts you have provided, Commissioner Stover has been invited by the Ministry of Education in Taiwan to speak at an international conference that will help further develop the senior education in Taiwan. Specifically, Commissioner Stover will share his experience with the Osher Lifelong Learning Center at Cal State Fullerton. Because Commissioner Stover will be speaking about his experience in providing older adults with opportunities to continue learning in a university setting, this will be helpful in Taiwan's development in senior education. Therefore, the payments for his transportation and lodging are

reasonably related to a governmental purpose, which is the development of senior education in Taiwan.

In addition, the travel is provided by the government of Taiwan, which is a foreign government and satisfies Section 89506(a)(2). Therefore, Commissioner Stover may accept payments for travel, lodging, and subsistence that are reasonably related to the governmental purpose provided by the government of Taiwan, so long as those payments are reported on his Statement of Economic Interests.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heidi G. Kim  
Legal Intern, Legal Division

HGK:jgl