

July 8, 2014

Donna Johnston  
Sutter County Clerk-Recorder  
Registrar of Voters  
Ex-Officio Clerk of the Board  
1435 Veterans Memorial Circle  
Yuba City, CA 95993

Re: Your Request for Advice  
**Our File No. A-14-115**

Dear Ms. Johnston:

This letter responds to your request for advice regarding the honoraria provisions of the Political Reform Act (the “Act”)<sup>1</sup> and is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, our advice is based solely on the provisions of the Act. We offer no opinion on the applicability of other laws.

### **QUESTION**

May you accept compensation for teaching a course as part of an educational program, the California Professional Election Administrator Credential Program (“the “Program”) offered by the Association of Clerks and Election Officials (“ACED”)?

### **CONCLUSION**

Yes. Compensation for personal services that are customarily provided in connection with the practice of a bona fide business, trade or profession is not considered honoraria. As an instructor in the Program, you will be engaging in the bona fide profession of teaching.

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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

You are the Registrar of Voters for the Sutter County Clerk-Recorder's office. In our telephone conversation you indicated that you have full disclosure under your agency's conflict of interest code. You have been asked to fill in as an instructor to teach a course as part the California Professional Election Administrator Credential Program ("CalPEAC"), an educational program created and operated by the California Association of Clerks and Election Officials, with assistance from the Election Center. Upon completion of the course, students are awarded the CalPEAC Credential. The Election Center will pay you \$750 per course, which is the customary amount paid to all instructors.

## ANALYSIS

Section 89502 prohibits public officials from accepting honoraria from individuals from whom they are required to report receipt of gifts and, because you have full disclosure for purposes of filing your Form 700, the Election Center would be a reportable source. Section 89501(a) includes in the definition of honorarium "any payment made in consideration for any speech given . . ." Literal application of this definition could arguably prohibit designated employees from receiving money for teaching.

However, Section 89501(b) states that "honorarium" does not include "earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade or profession, such as teaching . . ." Therefore, the issue is whether you will be engaging in bona fide teaching when teaching courses for the Program.

Commission Regulation 18932.2 partially addresses the question of whether certain teaching assignments are "bona fide." The regulation states, for example, that teaching at a government approved or independently accredited college or university is presumed to be bona fide teaching for purposes of the honorarium restrictions. You have not stated whether the Program or ACED are accredited by any governmental body or organization. However, the regulation is not and was not intended to be the exclusive standard for determining whether a person subject to the honorarium prohibition is engaged in bona fide teaching. Ultimately, the Commission must look at the circumstances and evaluate factors such as the nature of the institution that offers the course, the course subject, the persons to whom the course is offered and the compensation offered. (*Tribe* Advice Letter, No. A-93-049.)

Based on the information you have provided, it appears that you will be engaged in bona fide teaching. The courses are offered on a regular basis as part of a credentialing program created by the California Association of Clerks, an organization of county clerks and election administrators whose mission is to offer support and facilitate the work of its members. The Association's educational program is similar to that of many government accredited institutions in that it offers courses that assist students in acquiring the necessary knowledge and skills to work in their chosen profession. Also, the compensation you will be paid is the same as that

customarily paid to all instructors in the program. Therefore, Section 89502 does not prevent you from teaching these courses.

Please note that this letter does not address issues relating to incompatible activities or other provisions of state law which may restrict your ability to earn income outside of your state employment.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl