

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

January 13, 1977

77-01-257

Betty Smith
Staff Counsel
Office of the Lieutenant Governor
State Capitol, Room 1028
Sacramento, CA 95814

Dear Ms. Smith:

Thank you for your letter of December 16, 1976, requesting advice with respect to Lieutenant Governor Dymally's disclosure obligations under the Political Reform Act. The facts as I understand them are as follows.

Lieutenant Governor Dymally is the Chairman of California's Economic Development Commission and a member of the University of California Board of Regents. He recently completed a six-nation trade mission on behalf of these two entities during which he spoke with various government, trade and university officials in the nations he visited. Because he was representing the State on official business during the trade mission, the Lieutenant Governor's travel expenses to and from the United States and between each of the six nations were paid for by the State and he received per diem. In addition, he occasionally received from a host government air and automobile transportation inside a country, hotel accommodations and food. Your question is whether, and if so how, the above items must be reported under the Political Reform Act.

As you know, the payments received from the State of California are not income pursuant to Government Code Section 82030(b)(2)^{1/} and, therefore, are not reportable. However, the value of the items received from the various host governments are reportable gifts.

^{1/} All references are to the Government Code unless otherwise noted.

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Section 82028 states that a gift is "any payment to the extent that consideration of equal or greater value is not received" from the recipient. While on the trade mission, Lieutenant Governor Dymally was functioning in his official capacity and performing official duties for the State as consideration for the receipt of transportation expenses, salary and per diem. It is our understanding that he was not, on the other hand, performing any services in exchange for the benefits received from the various foreign governments. In other words, the trade mission was undertaken as part of the Lieutenant Governor's official duties and the services he rendered were to the State of California, not to the various foreign governments which provided him with certain gratuitous benefits. Under these circumstances, we think he received payments for which no consideration was provided in exchange and, hence, we conclude that these payments are gifts.

You have specifically asked whether the receipt of hotel accommodations, transportation and food from the foreign governments were either honoraria or not "payments" within the meaning of 2 Cal. Adm. Code Section 18728. This regulation provides that food and beverages received at an event at which a filer speaks, participates in a panel or seminar or performs a similar service, and intrastate transportation to and from that event and necessary hotel accommodations in connection with the event, are not "payments" and need not be reported. It also states that payments received in return for speaking at an event, participating in a panel or seminar or performing a similar service may be disclosed as "honoraria," and need not be classified as either gifts or income.

The regulation contemplates the performance of a certain type of service at a structured event. Moreover, it clearly does not include negotiations or discussions conducted by an official on behalf of his government. It is our understanding that the "payments" received by the Lieutenant Governor were not received in connection with, or in return for, services of the requisite type. Rather, the payments apparently represented gratuitous extensions of goodwill by the foreign governments and were not conditioned on the Lieutenant Governor speaking or providing a similar service at a structured event. Accordingly, the provisions of 2 Cal. Adm. Code Section 18728 are not applicable to the payments.

Finally, I should point out that in reporting these gifts consolidation of payments from the same source is permitted.

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For example, if the Lieutenant Governor received four meals, one night's lodging and some transportation from the same government, he may report these items as "meals, lodging and transportation" received from the same source. In addition, the appropriate dates and a good faith estimate of the value of the payments must be disclosed. I wish to emphasize, however, that gifts from different sources may not be consolidated.

If you have any further questions, please feel free to contact me.

Sincerely,

Ted Prim

Ted Prim
Staff Counsel
Legal Division

TP:jo

Smith

TO: Delbert Spurlock, Director, Conflict of Interest Division, F.P.P.C.

FROM: Betty Jo Smith, Staff Counsel to the Lt. Governor Ext. 5-9533
Ext. 5-9533

DATE: December 16, 1976

RE: Request for Informal Advise

FACTS: Lt. Governor Mervyn Dymally, Chairman of California's Economic Development Commission recently completed a six-nation trade mission. He talked with government and business leaders and trade officials in the Philippines, Australia, Japan, Korea, Indonesia and Papua, in an effort to increase trade contacts and to provide more jobs for Californians. He also visited and spoke at universities in each nation, to discuss increased education contacts and student exchanges.

The Economic Development Commission passed a resolution requesting that the Lt. Governor, as Chairman of the Commission, undertake the trade mission. The Commission also requested that the Chairman prepare and submit a report to the Commission, upon his return, containing such recommendations as he may have formulated on practical steps to improve markets for California products and greater utilization of California ports in the Pacific Basin.

The Lt. Governor, as Chairman of the Economic Development Commission was a guest of the government of some of the six nations.

QUESTION: Is the receipt of food, beverage, necessary hotel accommodations and air travel within a nation, received in connection with the accomplishment of the purpose(s) of the trade mission, the receipt of honorarium or a payment which must be disclosed by the Lt. Governor under the provisions of the Political Act of 1974, as amended?

If reportable, would the receipt of the above described nominal benefits be reportable as gifts, income, or other (if other, please specify)? Please specify the extent and nature of the required disclosure.

QUESTION: Are the above described benefits excluded as payments by F.P.P.C. regulation 18728 (a), and therefore not reportable by the filer?