



California Fair Political Practices Commission

February 2, 1989

Honorable Henry J. Mello
11th Senate District
State Capitol, Room 5108
Sacramento, CA 95814

Re: Your Request For Informal
Assistance
Our File No. I-89-024

Dear Senator Mello:

This is in response to your request for advice relative to the newly enacted provisions of the Political Reform Act (the "Act")^{1/} limiting campaign contributions. Since your advice request does not refer to a specific governmental decision, we are treating your question as a request for informal assistance pursuant to Regulations 18329(c) (copy enclosed).^{2/}

QUESTION

If an elected state officer attends a \$500-a-plate political fundraiser at the invitation of another elected state officer for the specified purpose of providing musical entertainment, without purchasing a ticket and without receiving financial remuneration for the musical

^{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.

^{2/} 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).)

entertainment, is the officer in violation of any of the provisions of Proposition 73?^{3/}

CONCLUSION

An elected state official's acceptance of a free ticket to a political fundraiser which he attends for the specified purpose of providing musical entertainment without financial remuneration does not constitute a contribution either to or from the official and therefore does not violate the provisions enacted by the passage of Proposition 73.

FACTS

Based upon information received from a telephone call to your office, the following facts are being considered here: You and another state senator are members of a small musical ensemble which performs at political fundraisers without remuneration. You attend the fundraisers without purchasing a ticket.

ANALYSIS

The passage of Proposition 73 resulted in the enactment of a series of provisions in amendment of the Act. The sections relevant to your inquiry are set forth in Chapter 5 of the Act, Sections 85100-85400. The primary focus of these sections is the regulation of campaign contributions. Therefore, the threshold issue is whether or not your appearance at the fundraisers, accompanied by your musical performance, constitutes a contribution within the Act.

Section 82015 defines a contribution in part as "a payment...except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes..." Section 82044 defines a payment as a "payment, distribution, transfer, loan, advance, deposit, gift, or other rendering of money, property, services, or anything else of value, whether tangible or intangible."

In a somewhat analogous situation, in In re Cory (1975) 1 FPPC Ops. 137 (copy enclosed), the Commission stated that free attendance by an elected state officer at a campaign function does not involve a contribution in either direction. Even though the free tickets should be treated as payments for political purposes, not as personal income or gifts,^{4/} they are not contributions. The attendance of the elected

^{3/} The relevant provisions of Proposition 73 have been enacted as Government Code Sections 85300-85400.

^{4/} The definition of "income" includes gifts. (Section 82030.)

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state officer at the campaign function provides full and adequate consideration in the form of the intangible benefit resulting from his presence. Conversely, the benefit to the sponsoring candidate conferred by the appearance of the elected state official would not be a contribution to that candidate, because the free ticket is presumed to be full and adequate consideration for the benefit obtained. (Id. at 138-139.)

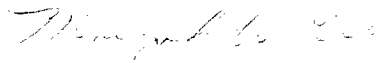
In view of the Cory opinion, your acceptance of a free ticket to a fundraiser would not be a contribution. As an elected state official, your presence at the event is presumed to provide full and adequate consideration for the value of the ticket. The fact that you provide an additional benefit in the form of musical entertainment would merely be viewed as additional consideration and would not change this result. By the same reasoning, your appearance and performance at the fundraiser would not be treated as a contribution to the sponsoring candidate.

Since no contribution has occurred, the provisions of Chapter 5 regulating contributions do not apply. No other provisions enacted by Proposition 73 apply to the facts as stated.

If you have any questions concerning this letter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

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Enclosures



Senate

California Legislature

FPPC

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HENRY J. MELLO

SEVENTEENTH SENATORIAL DISTRICT

Senate Majority Whip

January 6, 1989

John G. McLean
Legislative Coordinator
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95804

Dear Mr. McLean:

This is to request your office provide a written opinion on the following question:

If an elected state officer attends a \$500-a-plate political fundraiser at the invitation of another elected state officer for the specified purpose of providing musical entertainment, without purchasing a ticket and without receiving financial remuneration for the musical provisions, is the officer in violation of any of the provisions of Proposition 73?

Please don't hesitate to contact my staff person Cathie Douglas at 4-6446 should you have any questions.

Thank you in advance for your timely consideration of this request.

Sincerely,

HENRY J. MELLO
17TH SENATE DISTRICT

HJM/ckd



Senate

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FPPC

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