



California Fair Political Practices Commission

July 18, 1989

Honorable Sandra Thompson
Judge of the Municipal Court
South Bay Judicial District
825 Maple Avenue
Torrance, CA 90503-5058

Re: Your Request for Advice
Our File No. A-89-375

Dear Judge Thompson:

You have requested advice with respect to the interpretation of provisions of the Political Reform Act (the "Act").¹ Specifically, you have requested advice concerning the treatment of payments received as honoraria.

QUESTIONS

1. Is the payment you receive for attending meetings of an advisory panel of which you are a member and denominated an "honorarium" subject to the \$1,000 limit imposed by Section 85400?
2. If so, would directing the honorarium to be paid to a designated charity, with or without claiming the sum as a deduction on a tax return, allow such payments to be excluded from the limit of Section 85400?

CONCLUSIONS

1. The payment that you receive for attending meetings of the advisory panel is not subject to the \$1,000 limit imposed by Section 85400, unless your participation involves a speech, article or published work on the governmental process.

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. If the payment is subject to the \$1,000 limit, it may nevertheless be excluded from the limit if it is donated to charity within 30 days of receipt without taking a charitable deduction for tax purposes.

FACTS

You currently serve as a member of the Pacific Bell Telecommunications Consumer Advisory Panel. For each meeting that you attend, you are paid from \$100 to \$300 plus expenses, depending upon the length of the meeting. The payments of \$100 to \$300 are denominated as "honoraria."

ANALYSIS

Section 85400 provides as follows:

No elected officeholder shall accept any gift or honorarium for any speech, article, or published work on a subject relating to the governmental process from any single source which is in excess of one thousand dollars (\$1,000), in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith.

Section 85400.

As used in Section 85400, the term "honorarium" means any payment received for making a speech, participating in a panel or seminar, or writing an article or other published work. (Regulation 18540(b), copy enclosed.)² "Speech" refers to a public address, oration, or other form of substantive oral presentation. (Regulation 18540(d).) "Governmental process" is defined as including activities related to the official duties of the elected officer, or the functions, programs and policies of government. (Regulation 18540(e).)

Therefore, if your participation on the advisory panel involves an article or published work, a public address, oration or other form of substantive oral presentation on the governmental process, the maximum payment that you could receive in a calendar year from a single source would be \$1,000, excluding reimbursement for travel and reasonable subsistence.³ Since the payments you

² Regulation 18540 was adopted by the Commission on June 6, 1989, and is currently pending review by the Office of Administrative Law.

³ "Reasonable subsistence" means reasonable payments for necessary meals and lodging provided directly in connection with the event. (Foreman Advice Letter, No. I-89-323, copy enclosed.)

receive are presumably from a single source, they would be aggregated for the calendar year. If your participation on the panel does not involve a speech, article or published work on the governmental process, the payments are not subject to the \$1,000 limitation.

If the payment is not really an honorarium, but, rather, a fee for services, the \$1,000 limitation of Section 85400 would also not apply. However, if you claim that the payment is income, you will have the burden of proving that the consideration provided was of equal or greater value than the payment received. (Regulation 18540(c).)

Even if the payments that you receive are subject to the \$1,000 limitation of Section 85400, the payments would not be reportable if donated to a charitable organization in accordance with Regulation 18726.1 (copy enclosed). A payment for a speech, article or published work on the governmental process is presumed to be a gift. (Regulation 18540(c).) Regulation 18726.1(b)(2) permits a public official to donate an unused gift to charity within 30 days of receipt, provided that it is not claimed as a charitable contribution for tax purposes. In this event, the gift has no value to the official and need not be disclosed. It would also not count towards the \$1,000 limitation of Section 85400.

If you have any questions regarding the above, please contact me at (916) 322-5901.

Sincerely,

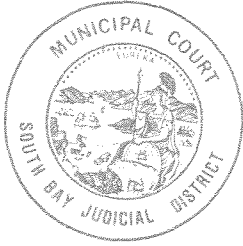
Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED/MWE/aa

Enclosures



IN CHAMBERS
THE MUNICIPAL COURT
SOUTH BAY JUDICIAL DISTRICT
825 MAPLE AVENUE
TORRANCE, CALIFORNIA 90503-5058
SANDRA THOMPSON, JUDGE

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TELEPHONE
(213) 533-6501

June 9, 1989

Mr. John Larson, Chairman
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Dear Mr. Larson:

REQUEST FOR ADVISORY OPINION

Pursuant to Government Code section 83114, I request an advisory opinion as follows:

Factual Situation

I currently serve as a member of the Pacific Bell Telecommunications Consumer Advisory Panel. For each meeting I attend, I am paid from \$100 to \$300, denominated an "honorarium," plus expenses (depending on the length of the meeting).

Questions

1. Is the honorarium described above subject to the \$1,000 limit prescribed by Government Code section 85400 (added by Proposition 73)?
2. If the answer to question No. 1 is yes, would directing the honorarium to be paid to a designated charity, with or without claiming the sum as a deduction on a tax return, violate Government Code section 85400?

If you require additional information, please do not hesitate to contact me. Thank you for your cooperation.

Very truly yours,

SANDRA THOMPSON
Judge of the Municipal Court

ST:bf



California Fair Political Practices Commission

June 23, 1989

Sandra Thompson
Judge of the Municipal Court
South Bay Judicial District
825 Maple Avenue
Torrance, CA 90503-5058

Re: Letter No. 89-375

Dear Judge Thompson:

Your letter requesting advice under the Political Reform Act was received on June 22, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison an attorney in the Legal Division, directly at (916) 322-5901.

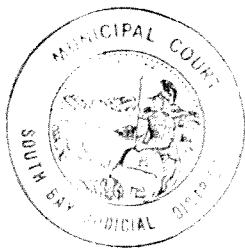
We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Kathryn E. Donovan
General Counsel

KED:plh



IN CHAMBERS
THE MUNICIPAL COURT
SOUTH BAY JUDICIAL DISTRICT
 825 MAPLE AVENUE
 TORRANCE, CALIFORNIA 90503-5058
 SANDRA THOMPSON, JUDGE

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TELEPHONE
 (213) 533-6501

June 9, 1989

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 Fair Political Practices Commission
 428 J Street, Suite 800
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SANDRA THOMPSON
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