



California Fair Political Practices Commission

August 2, 1991

James R. Sutton
NIELSEN, MERKSAMER, HODGSON,
PARRINELLO & MUELLER
650 California Street, Suite 2650
San Francisco, CA 94108

Re: Your Request for Informal Assistance
Our File No. I-91-156

Dear Mr. Sutton:

This letter is in response to your request for written advice relating to telephone advice provided to you on February 13, 1991 under the new provisions of the Political Reform Act (the "Act")¹ which limit gifts and honoraria. Your request is general in nature and does not refer to a particular governmental decision but rather seeks general guidance regarding certain provisions of law. Accordingly, we treat your letter as a request for informal assistance pursuant to the provisions of Regulation 18329.²

The issues raised in your letter present policy questions which the Commission will consider in the near future. Our advice is subject to change as new regulations concerning these matters are adopted.

QUESTIONS

1. Under the provisions of the Act, are travel and accommodations provided to a state official in connection with a speaking event reportable or subject to limits?

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. (Section 83114; Regulation 18329(c).)

2. Under the provisions of the Act, are travel and accommodations provided to a state official in connection with a speaking event but which are not necessary for the state official's participation in the event reportable and subject to the limits?

3. Under the provisions of the Act, are payments to a state official which are neither directly in connection with a speaking event nor necessary to the state official's participation in the event gifts to the official?

CONCLUSION

1. Accommodations and intrastate travel which are provided directly in connection with a speaking event and which are necessary to the official's attendance at the event are neither reportable nor subject to limits.

2. Travel and accommodations which are directly in connection with a speaking event but which are not necessary to the official's attendance at the event are reportable but are not subject to limits.

3. Payments which are neither directly in connection with a speaking event and which are not necessary to the official's attendance at a speaking event are reportable gifts subject to limits.

ANALYSIS

Effective January 1, 1991 certain provisions of the Act regarding gifts and honoraria were amended. The Act now provides that:

(a) No elected state officer may accept an honorarium.

(b) "Honorarium" means, except as provided in subdivision (c), 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.

Section 89502(a) and (b).

(a) No elected state officer shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).

Section 89504(a).

The Commission will be considering the adoption of regulations in the near future to clarify and implement the new statutes. As you correctly point out, the Commission has existing regulations regarding limitations on gifts and travel. Although these regulations predate the current statutes cited above, staff continues to provide interim advice in accordance with these regulations. For example, Regulation 18728 provides as follows:

....free admission, food, beverages and similar nominal benefits provided to a filer at an event at which he or she speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel and for necessary accommodations provided directly in connection with the event are not payments and need not be reported by the filer.

Regulation 18728(a), emphasis added.

Regulation 18623(a) provides a similar exception.

As we discussed during the course of our telephone conversation, and as you correctly summarize the advice in your request for advice, the statutory scheme specifically prohibits state officials from receiving honoraria. (Section 89502.) However, reimbursement or payment for actual travel expenses and reasonable subsistence provided directly in connection with a speech given is not prohibited. We have previously advised that the term "accommodations" includes lodging and meals. (See Puglia Advice Letter, No. A-77-464; Chel Advice Letter, No. A-78-264; Tebbetts Advice Letter, No. I-91-186.)

The extent to which food and lodging are "necessary" in connection with speaking at an event must be considered on a case-by-case basis. Payments for necessary accommodations are not disclosable and do not trigger a conflict of interest. Thus, where intrastate travel and accommodations are provided in connection with a speech or with participation in a panel or seminar consistent with Regulation 18728, the travel and accommodations need not be reported and are not subject to the gift and honoraria limits or the conflict-of-interest provisions of the Act.

The extent to which food and lodging are "necessary" in connection with a speaking event must be considered on a case-by-case basis. (Tebbetts Advice Letter, supra.) Any accommodations or other nominal benefits provided to a state official which are not necessary or directly in connection with the official's attendance at the gathering for purposes of speaking to the assembly may be gifts and not covered by this very limited exception.

We also concur with your determination that, under Section 89506(a), travel and accommodations which are directly in connection with a speaking event are not prohibited or subject to limits as follows:

(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, is not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, member of a state board or commission, or designated employee of a state agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a nonprofit charitable or religious organization which 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.

Section 89506(a).

Thus, while travel payments which are not exempted by Regulation 18728 are reportable, such payments are not limited if they fall under one of the two categories indicated in Section 89506(a).

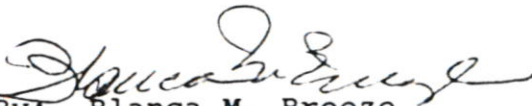
In addition, other benefits received by a state official in connection with a speech, such as admission to social gatherings held in connection with the event, are reportable gifts. Section 89504 limits gifts to state officials. A state official may not accept gifts from any single source in any calendar year in excess of \$250. Moreover, any gift in excess of \$50 from a single source is reportable and gifts of \$250 subject the state official to disqualification under the conflict-of-interest provisions of the Act. We have previously advised that greens fees, meals, refreshments, transportation, and entertainment provided to elected state officers and state administrative officials in

connection with attendance at an event and provided by the event sponsors are reportable gifts subject to the limits. (Lowell Advice Letter, No. I-91-208.) Similarly, tickets to entertainment activities or payments for lodging which are in excess of what is minimally required for the recipient to make a presentation at a conference are reportable gifts subject to limits and are not prohibited honoraria.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.³

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

SH:BMB

³ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.