



California Fair Political Practices Commission

June 28, 1991

Michael J. Kersten
Deputy Legislative Counsel
State Capitol, Suite 3021
Sacramento, CA 95814-4996

Re: Your Request for Informal Assistance
Our File No. I-91-175

Dear Mr. Kersten:

You have requested informal assistance with respect to the newly-enacted prohibitions on acceptance of honoraria set forth in Section 89502 of the Political Reform Act (the "Act").¹

QUESTIONS

1. May a member of the Legislature agree to give a speech upon the condition that a monetary donation will be made in the member's name to a charitable organization specified by the member or that a campaign contribution will be made to the member's campaign committee?

2. May a member of the Legislature agree to give a speech for no consideration but suggest at the time of agreement that a monetary donation be made in his or her name to a charitable organization specified by the member or a campaign contribution be made to the member's campaign committee? (This question assumes that the member makes it clear at the time of the agreement that he or she will give the speech regardless of whether the charitable donation or campaign contribution is made.)

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. 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).)

CONCLUSIONS

The following represents interim advice which may be revised as the Commission considers new gift and honoraria regulations. Proposed honoraria regulations will be before the Commission for prenotice discussion at its July meeting.

1. A legislator may not agree to give a speech upon the expressed condition that a monetary donation be made in the member's name to a charitable organization. However, acceptance of a campaign contribution, whether not required as a precondition for giving the speech, would not constitute acceptance of an honorarium.

2. If a legislator agrees to give a speech with no conditions attached and merely suggests that a contribution be made to his or her campaign committee, the contribution will not be considered to be an honorarium.

If a legislator agrees to give a speech and merely suggests that a donation be made to charity, such a donation will not be deemed to be an honorarium if the following circumstances are met: (1) the donation is made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organization; (2) the legislator does not make the donation a precondition for his or her speech; (3) the legislator does not claim the donation as a deduction for income tax purposes; and (4) the payment will not confer a financial benefit on the legislator.

FACTS AND ANALYSIS

Effective January 1, 1991, members of the Legislature have been prohibited from accepting honoraria by Section 89502. That section provides, in pertinent part, as follows:

(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.

Members of the Legislature are elected state officers. (Sections 82021, 82024.) Therefore, except as otherwise provided in Section 89502, members of the Legislature cannot accept a payment in consideration for giving a speech. In view of the new statutory prohibitions, you have requested guidance with respect

to the application of the prohibitions to certain situations. We provide the following interim advice:

1. May a member agree to give a speech upon the condition that a monetary donation will be made in the member's name to a charitable organization specified by the member or that a campaign contribution will be made to the member's campaign committee?

We have previously advised that an elected officer may agree to give a speech upon the condition that a donation be made to a charity without the officer being deemed to have received a gift or honorarium. (Speier Advice Letter, No. I-87-52, copy enclosed.) This advice was predicated upon an existing statute and regulation which provide that a payment donated to charity within 30 days without the officer having taken a deduction for tax purposes is not "received" as a gift. (See, Section 82028(b)(2); Regulation 18726.1(b)(2), copy enclosed.)

However, Section 89502, which became effective January 1, 1991, now sets forth specific circumstances under which the prohibition against accepting honoraria does not apply to payments made in consideration for making a speech. Subdivision (e) of Section 89502 provides an exception for honoraria which are either returned to the donor or are donated to the General Fund of the State of California within 30 days after receipt and for which no tax deduction is claimed. There is no such express exception for charitable donations.

At its May meeting, the Commission discussed whether a charitable donation could be construed as an "honorarium." At that time, the Commission directed staff to provide interim advice that an elected state officer may not require that a donation be made to charity as a condition for giving a speech. A payment made to charity as a condition for giving a speech would be considered a payment made "in consideration" for the speech and, therefore, constitute an "honorarium." Therefore, pending further direction by the Commission, our advice is that a legislator may not condition a speech upon the making of a charitable donation.

We have also previously given oral advice that a contribution is not an honorarium. The term "honorarium" is defined, in part, as a "payment." (Section 89502(b).) The Act defines "payment" as follows:

"Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other

rendering of money, property, services or anything else of value, whether tangible or intangible.

Section 82044. Emphasis added.

We have interpreted the use of the word "payment" in the definition of "honorarium" to be limited to those payments which would be classified as either "gifts" or "income." Since campaign contributions are expressly excluded from the definition of "gift"² and the definition of "income,"³ we have advised that they are also excluded from the definition of "honorarium." It should also be noted that prior to the enactment of the recent statutory prohibitions on honoraria, Commission regulations defined an honorarium as a "payment." (Regulations 18623 and 18728, copies enclosed.) However, the Commission has never advised that these regulatory definitions require that contributions be treated as honoraria.

2. May a member of the Legislature agree to give a speech for no consideration but suggest at the time of the agreement that a monetary donation be made in his or her name to a charitable organization specified by the member, or that a campaign contribution be made to the member's campaign committee?

Your second question assumes a situation where it is clear that the legislator has not conditioned his or her speech upon the making of a donation to charity or contribution to his or her campaign. If it is clear from the surrounding circumstances that the legislator's request is a mere suggestion and not contractually required, the legislator is not in a position to exercise direction and control over the funds suggested for donation or contribution. Therefore, he or she has not "accepted" an honorarium. This situation would necessarily require a factual determination to be made on a case-by-case basis.

With respect to a charitable donation, the payment will not be considered an honorarium under the following circumstances: (1) the donation is made directly to a bona fide charitable, educational, civic, religious, or similar tax-exempt nonprofit organization; (2) the legislator does not make the donation a precondition for his or her speech; (3) the legislator does not claim the donation as a deduction for income tax purposes; and (4) the payment will not confer a financial benefit on the legislator.

Again, we caution that the new honoraria prohibitions will be the subject of discussion before the Commission at its July

² See Section 82028(b)(4).

³ See Section 82030(b)(1).

meeting. At that time, the Commission will be considering regulations to clarify the scope of the prohibitions. Therefore, this advice is subject to change.

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

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

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Enclosures