



# California Fair Political Practices Commission

July 23, 1992

Margaret J. Hoehn  
Staff Counsel  
Public Employees' Retirement System  
Legal Office  
P. O. Box 942707  
Sacramento, CA 94229-2707

Re: Your Request for Advice  
Our File No. I-92-392

Dear Ms. Hoehn:

This letter is in response to your request for advice regarding the travel provisions of the Political Reform Act (the "Act").<sup>1</sup> Your request is general in nature and seeks general guidance. Accordingly, we treat your letter as a request for informal assistance pursuant to the provisions of Regulation 18329.<sup>2</sup>

## FACTS

The Board of Administration of the Public Employees' Retirement System ("PERS") is in the process of developing a written policy statement regarding travel by members of the board and staff. Your goal is to develop a policy statement that is in compliance with the provisions of the Act and which will provide clear notice of the circumstances under which members of the board and staff may accept payments from third parties for travel, lodging and meals.

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c).)

You have submitted for our review two policy statements. The first draft policy statement is dated May, 1992. The second draft is dated June 29, 1992. You seek our advice to determine whether these drafts are in compliance with the provisions of the Act.

ANALYSIS

As amended, the Act provides as follows:

No member of a state board or commission, and no designated employee of a state agency, shall accept gifts with a total value of more than two hundred fifty dollars (\$250) in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests....

Section 89505(a).

Thus, pursuant to the provisions of Section 89505, PERS members of the board of directors and staff may not accept gifts of more than \$250 in a calendar year from any single source if they would be required to report the receipt of a gift from that source on their statements of economic interests.<sup>3</sup>

However, certain payments, advances, or reimbursements for travel and related lodging and subsistence are excluded from the prohibition of Section 89505. (Section 89504(b)(1).)

Intrastate Travel

For purposes of determining whether intrastate travel is an exempted gift, Regulation 18950.3 provides:

Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and

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<sup>3</sup> Please note that a payment for transportation and necessary lodging and subsistence provided by an agency to a member of a state board or commission or to a designated employee is not an honorarium or a gift. (Regulation 18950.1(d).) Thus, if your agency provides such payments to board members or staff, the payment is not a gift, it is not subject to any limits, and it is not reportable.

beverages on the day of the activity, are not payments and need not be reported by any filer.

Thus, travel in connection with a speech given,<sup>4</sup> if the travel is within the State of California, is not subject to any limits and is not reportable. Payments received for expenses such as admission to the conference at which the public official will present a speech, and meals and beverages provided to the official on the day of the speech are also not reportable and not subject to limits.

#### Out-of-State Travel

Payments for out-of-state transportation are reportable either as income or as a gift. Income in the form of a travel payment, while reportable, is not subject to any limits. Similarly, travel outside the State of California but within the United States in connection with a speech is reportable but not limited when the speech is reasonably related to a legislative or governmental purpose or to an issue of public policy. (Section 89506(a)(1), Regulation 18950.1.)<sup>5</sup>

#### Foreign Travel

Travel outside the United States is reportable and subject to limits unless 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, 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)(2).)

#### Lodging and Subsistence

Lodging and subsistence in connection with a speech is not limited and not reportable as long as the payment is "necessary" and covers meals and beverages on the day of the speech. (Regulation 18950.3)

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<sup>4</sup> "Speech given" means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. (Regulation 18931.1.)

<sup>5</sup> An official who receives a reportable payment of \$250 or more will be required to disqualify himself or herself from participating in governmental decisions regarding the source of the payment if the payment was received or promised to the official within 12 months prior to the time when the decision is made. (Section 87103.)

Payments for lodging and subsistence are also not subject to any limits and not reportable if they cover the day preceding, the day of, and the day immediately following the speech. (Section 89506(a)(1).) However, in such an instance, the speech must be reasonably related to a legislative or governmental purpose or to an issue of public policy and the speech must be delivered within the United States.

We now proceed to review the two policy statements you have submitted for our consideration.

Policy Statement Dated May, 1992

You have requested our advice regarding a chart that appears at page 3 and paragraphs 2 through 6 at pages 5 and 6 of this policy statement.

1. Page 3. The chart on page 3 provides general guidelines on travel for members of the board and staff. The chart states that the individual or entity who requests the participation of a PERS official as a speaker at an event shall pay for any travel expenses incurred, "subject to FPPC laws and limits." In addition, it states that the "value of the travel/lodging/meals may be income/gift for FPPC reporting purposes." These statements are not incorrect. However, they are broad and do not inform the reader regarding the provisions of the Act.

2. Page 5, Paragraph 2. This paragraph states that PERS officials "may continue to seek reimbursement for travel and lodging costs from sponsoring organizations when a trustee or staff member is part of the formal conference agenda." (Emphasis added.) As stated in our analysis, not all payments for travel and related lodging and subsistence are excluded from the prohibition of Section 89505. In addition, the exceptions apply only when an official travels for purposes of delivering a speech or participating in a panel, seminar, or debate. (Regulation 18931.1.) Please refer to our analysis to determine which payments for travel, lodging and subsistence are exempted from the gift and honoraria prohibitions of the Act.

3. Page 5, Paragraph 2. This paragraph restates the prohibitions of Section 89503. The statement should read as follows: "Board members and designated employees may not accept any honorarium from any source that the member or employee would be required to report as a source of income or gifts on his or her Statement of Economic Interests."

4. Page 5, Paragraph 3. This paragraph is correct. However, it is broad and does not explain the provisions of the Act.

5. Page 5, Paragraph 4. This paragraph states that gifts of lodging, travel and meals may be reportable. The word "gift"

should be substituted with the word "payments" since both gifts and income may be reportable.

6. Page 6, Paragraph 1. This paragraph is beyond the jurisdiction of the Commission. Thus, we make no comments regarding its provisions.

Policy Statement Dated June 29, 1992

1. Page 3. You have asked whether it is appropriate to use the term "discussant" to qualify the term "speaker." The definition of a "speech given" does not include the term "discussant." The appropriate definition of a "speech given" is that of Regulation 18931.1 discussed above. Thus, pursuant to the terms of Regulation 18931.1, a speaker would be a person who delivers a public address, oration, or other form of oral presentation, or a person who participates in a panel, seminar, or debate.

2. Page 4, Paragraph F. This paragraph states that when a PERS official travels out of state or to a foreign country to deliver a speech, the person requesting the speaker shall reimburse PERS for any expenses incurred by the official. For purposes of the Act, if the official receives reimbursement from PERS for the expenses incurred, the official would have no reporting obligations. However, such a payment to PERS would have to satisfy at least the following criteria: (1) The donor intended to donate the gift to PERS and not to the official; (2) PERS exercises substantial control over use of the gift; (3) The donor has not limited use of the gift to specified or high level employees, but rather has made it generally available to PERS personnel in connection with agency business without regard to official status; and (4) The making and use of the gift was formalized in a resolution or written public record which embodies the standards set forth above. (In re Stone (1977) 3 FPPC Ops. 52, 57.)

3. Page 5, Paragraphs A and B. Please refer to our discussion of Page 4, Paragraph F, above.

4. Page 5, Paragraph C. This paragraph is too broad. PERS officials may accept payments for travel in connection with a speech within the State of California. These payments are not reportable and are not subject to limits. However, payments for travel in connection with a speech outside the State of California but within the United States are reportable but not subject to limits only when the speech is reasonably related to a legislative or governmental purpose or to an issue of public policy. Foreign travel is reportable and subject to limits unless the exceptions of Section 89506(a)(2) apply, as discussed above.

5. Page 6, Paragraph D. This paragraph does not violate the provisions of the Act.

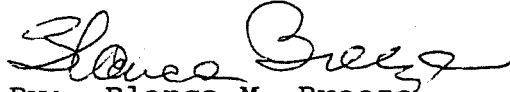
6. Page 6, Paragraph E. This paragraph does not violate the provisions of the Act.

7. Page 6, Paragraph F. The words "or gifts" should be inserted at line 3, after the word "income."

For your convenience, we are enclosing copies of Regulations 18950.1 and 18950.3. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.<sup>6</sup>

Sincerely,

Scott Hallabrin  
Acting General Counsel



By: Blanca M. Breeze  
Counsel, Legal Division

SH:BMB:bb  
Enclosures

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<sup>6</sup> 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.