



# California Fair Political Practices Commission

October 15, 1993

Don Benninghoven  
Executive Director  
League of California Cities  
1400 K Street  
Sacramento, CA 95814

Re: Your Request for Advice  
Our File No. I-93-298

Dear Mr. Benninghoven:

You have requested informal advice<sup>1</sup> on behalf of the League of California Cities ("League") regarding application of the Political Reform Act (the "Act")<sup>2</sup> to the League's travel reimbursement policy.

## QUESTION

The League often reimburses city officials for travel expenses in connection with League activities, including travel to the National League of Cities ("NLC") meetings. Under the Act, does such reimbursement create reporting or other obligations for the city officials?

## CONCLUSION

Reimbursement for travel provided to city officials when they represent the League on League business is income to the officials for purposes of the Act. This income is not exempt under Section 82030(b)(2) and therefore is reportable.

## FACTS

The League of California Cities is an association of all 470 cities in California. One of the League's most central functions

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<sup>1</sup> 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).)

<sup>2</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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

is to represent cities' interests in the State Legislature and Congress, by evaluating and responding to proposed bills which could potentially impact cities. The League's activities in this respect are specifically authorized by Government Code Section 50023. The League complements its legislative activities with an extensive training and development program for city officials.

The League is governed by a volunteer board of thirty-six directors. The board is composed of an elected representative from each of fifteen state regions, one representative from each of the League's ten operating departments, eight directors at large, a president, a first and second vice-president, and a past president. The board acts as the primary policy-determining group of the League.

Participation in the League often involves travel. City officials on the League's Board of Directors travel to quarterly board meetings, which occur at various locations in the state.

The League also works closely with the National League of Cities, which performs at the national level many of the advocacy and training activities done by the California League. Members of the League's Board of Directors and other League officials attend numerous NLC events in Washington, D.C. and throughout the country. As with the California League, city officials receive no remuneration for participating in NLC activities.

#### ANALYSIS

##### Income

Section 82030(b)(2) exempts "salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic, or charitable organization" from the definition of "income" under the Act.

You state that the League is both a governmental and an educational institution.<sup>3</sup> Therefore, you contend that the exemption from income should apply to a city official who is reimbursed by the League for travel expenses incurred by the official in connection with League business.

Under Section 82030(b)(2), the exemption from income only applies to reimbursement from a state, local or federal government agency and from a bona fide educational organization. Although you have stated that the League is the legislative arm of local agencies and its activities are authorized by Government

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<sup>3</sup> The Commission does not act as the finder of fact in providing advice. (In re Ogelsby) (1975) 1 FPPC Ops. 71.)

Code Section 50023, this does not make the League a "local government agency," which is defined in the Act as:

[A] county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing.

Section 82041.

You also state that the League serves an educational purpose. Therefore, it must be determined if the League is a bona fide educational organization within the meaning of Section 82030(b)(2) for the reimbursements from the League to be exempt from the definition of "income" under the Act.

Since the Commission has not promulgated regulations to clarify what constitutes a bona fide educational, academic, or charitable organization, we utilize other authorities for guidance concerning what constitutes a "bona fide educational, academic, or charitable organization" for purposes of the Act. (Sonoda Advice Letter, No. A-89-179, and McGowan Advice Letter, No. A-90-452, copies enclosed.)

The Internal Revenue Code allows individual deductions for charitable contributions. (26 U.S.C. 170(a)(1).) Charitable contributions are defined as contributions or gifts to, or for the use of:

(2) A corporation, trust, or community chest, fund, or foundation:

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition... or for the prevention of cruelty to children or animals.

26 U.S.C. 170(c)(2)(B).

Moreover, the Internal Revenue Code exempts from taxation:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial

part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation ..., and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C. Section 501(c)(3).

A corporation which is organized and operated exclusively for educational, academic, or charitable purposes, and which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code qualifies for this limited exception to the reporting and disclosure requirements of the Act.

Your letter states that the League serves educational functions, however I have been informed by your General Counsel, Ms. JoAnne Speers, that the League is not an educational organization enjoying tax exempt status under Internal Revenue Code Section 501(c)(3). Therefore, we must conclude that the League is not a bona fide educational organization for purposes of Section 82030(b)(2).

Accordingly, the reimbursements that city officials receive from the League are not excluded from the definition of income and may be considered either income or a gift. (Sections 82030(a) and 82028.)

#### Gift

A gift is a form of income. (Section 82030(a).) Section 82028(a) defines a gift as "any payment to the extent that consideration of equal or greater value is not received..."

Following our previous advice in the Riddle and Quan letters (A-89-200 and A-89-182), the city official has the burden of showing that he or she provided consideration of equal or greater value in exchange for the reimbursement of travel expenses and per diem paid by the League. If the official does not meet this burden of proof, the reimbursement will constitute a gift to the official. Section 89501 prohibits a local elected officeholder from accepting any gifts, from any single source, in excess of \$1,000 in a calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith.


City officials on the League's Board of Directors travel to quarterly board meetings as well as to national League events in Washington, D.C. and throughout the country. Therefore, if a city official can demonstrate that he or she provided value in return for paid travel expenses, the official received income and not a gift. If the city officials are representing the League on official League business, it appears that they are providing consideration and the travel reimbursement would not be a gift.

If the official does not provide consideration for the reimbursement, the reimbursement for travel is a reportable gift, but it is not subject to the limits. (Section 89501.) If the reimbursement is a gift, Regulation 18950.2 (copy enclosed) provides certain exceptions for local elected officers only. Essentially, the regulation provides that a payment for transportation, lodging and reasonable subsistence in connection with attendance at a meeting or conference is not subject to the limits in Section 89501; however, the payment is reportable under Section 87207(c).

I trust this answers your question.

Sincerely,

Steven G. Churchwell  
General Counsel

By:   
Jill Stecher  
Counsel, Legal Division

SC:JS:ak  
Enclosures

cc: Ms. Joanne Speers  
General Counsel, League of California Cities