



# California Fair Political Practices Commission

November 17, 1993

Daniel Wm. Fessler  
California President  
Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

Re: Your Request for Advice  
Our File No. I-93-408

Dear Mr. Fessler:

This is in response to your request for advice concerning whether certain payments you received from the University of Chicago were income, gifts or honoraria under the Political Reform Act (the "Act").<sup>1</sup> Normally, the FPPC does not give advice on past conduct. (Regulation 18329(b)(8)(A).) However, since your question may involve your future financial disclosure responsibilities under the Act, we will treat your request as one for informal advice. (See Regulation 18329(c)(4)(A).)<sup>2</sup>

## QUESTIONS

1. Was the September 14, 1993, payment you received from the University of Chicago for your work on an advisory committee to the University's President income, a gift or an honorarium under the Act?

2. Was the payment made to your agency, the California Public Utilities Commission ("CPUC"), by the University of Chicago for air fare and lodging expenses incurred by your participation on the advisory committee described in Question 1 above income, a gift or an honorarium under the Act?

3. Are either of the payments described above reportable on your statement of economic interests?

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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, Sections 18000-18954. 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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

### CONCLUSION

1. The September 14, 1993, payment to you was not a gift or an honorarium under the Act. However, the payment was income to you if the University of Chicago does, plans to do, or, within the past two years, has done business in California.
2. The payment made to the CPUC for your air fare and lodging was not income, a gift or honorarium under the Act.
3. Only if the September 14, 1993, payment to you was income would it be reportable on your statement of economic interests.

### FACTS

You are the President of the California Public Utilities Commission. Earlier this year, you were asked to serve on a five person committee, the purpose of which was to conduct an annual two or three day visit to the Argonne National Laboratory facilities in Idaho Falls, Idaho, and Argonne, Illinois. The National Laboratory is engaged in basic research on the issue of disposing of nuclear waste and its possible use as a fuel for what may in the future be known as "burner reactors." Your task was to assess how well the laboratory staff followed protocols established by the Nuclear Regulatory Commission and the federal Department of Energy. Your membership in the committee was solicited by virtue of your position as a member of the faculty of the University of California who is on a leave status so that you might serve on the CPUC. You have been informed that the funds expended to support the efforts of the advisory committee came from federal monies and the committee's function is in satisfaction of federal requirements.

On or about September 14, 1993, you received a check from the University of Chicago which was calculated at the sum of \$400 per day for the time spent in the visitation, reading protocols and other preparatory data and preparing a report to the University President and Laboratory Director. The check represented a total of three and a fraction days and was sent to your home. At about the same time, the University of Chicago also sent the CPUC a check covering your coach class air fare and lodging expenses. Two months prior to this receipt, you had asked CPUC staff attorneys if your receipt of such income would be prohibited by virtue of your membership on this Commission. Having received no advice that there was any type of problem, you deposited the check made out to you in your bank.

### DISCUSSION

Members of the CPUC, such as yourself, are required by the Act to report income and gifts over certain amounts on their statements of economic interests. (See Sections 87200, 87202-87205 and 87207.) Furthermore, as applied to officials in your capacity, the Act prohibits the receipt of honoraria (Section 89503) and limits gifts to \$270 per calendar year from a single source (Section 89505; Regulation 18954).

Section 82028 defines gift as "...any payment to the extent that consideration of equal or greater value is not received...." It is apparent from the facts presented that you provided consideration of equal or greater value in exchange for both of the University of Chicago's payments at issue here. The September 14, 1993, payment was for your work on an advisory committee which assessed the compliance of Argonne National Laboratory facilities with protocols established by the federal government. You visited two different facilities, read protocols and other data, and prepared a report to the University President and Laboratory Director. The other payment, made at about the same time as the September 14 payment to you, was from the University to the CPUC to cover your air fare and lodging expenses in doing this work. Based on these facts, these payments do not meet the definition of "gift" under the Act.

Section 89502(b) generally defines honorarium as "...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." From the facts presented, it is apparent that the payment for your work on the advisory committee does not meet the definition of "honorarium." Clearly, inspecting facilities, reading protocols and data, and preparing a report based thereon is more than making a speech, writing an article or attending meetings. In any event, Section 89502(c) provides that the term "honorarium" does not include "...earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade or profession...." On these grounds, we conclude that the payments you received from the University in connection with this work were not honoraria.

Section 82030(a) generally defines income as "...a payment received, including but not limited to any salary, wage, advance, ...reimbursement for expenses, per diem...." However, under Section 82030, the following payments are not income for purposes of the Act:

(1) Income received from any source outside of, not doing business in, not planning to do business in, or within the prior two years not having done business in, the jurisdiction<sup>3</sup> of the official's agency. (Section 82030(a).)

(2) Reimbursement for travel expenses and per diem received from a bona fide educational or academic organization. (Section 82030(b)(2).)

Based on the foregoing, the travel and lodging expenses paid on your behalf from the University of Chicago to the CPUC are not income because the University is a bona fide educational organization.

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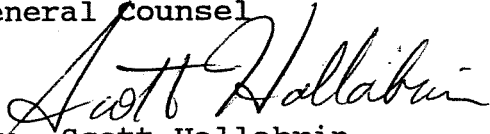
<sup>3</sup> Section 82035 provides that the entire state is the jurisdiction of a state agency, such as the CPUC.

As for the September 14, 1993 payment to you, if the University of Chicago does, is planning to do, or within the past two years<sup>4</sup> has done business in California, that payment would be income to you under the Act. However, if the University has not done and does not plan to do business within California, the payment is not income for purposes of the Act. We have no facts to make this determination and thus cannot definitively say whether or not this payment is income to you. If it is income, the payment will be reportable on your next statement of economic interests. Also, if the payment is income, the Act's conflict-of-interest provisions (see Sections 87100 and 87103), would preclude you for 12 months after September 14, 1993 from making, participating in or using your CPUC position to influence government decisions which will have a reasonably foreseeable and material financial impact upon the University of Chicago.<sup>5</sup>

We hope that this satisfactorily addresses your questions. Should you have additional questions, please contact me at (916) 322-5901.

Sincerely,

Steven G. Churchwell  
General Counsel

  
By: Scott Hallabrin  
Assistant General Counsel

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<sup>4</sup> For reporting purposes under the Act, Section 82020(a) uses the two year period prior to when your next statement of economic interests must be filed.

<sup>5</sup> Please contact us if you require a detailed explanation of the Act's conflict-of-interest provisions.