



California Fair Political Practices Commission

April 12, 1994

Brenda Jones
Senior Consultant
Office of Senator Diane E. Watson
State Capitol
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-94-072

Dear Ms. Jones:

This is in reply to your request for advice on behalf of Senator Diane E. Watson and the Women Legislators Caucus (the "Caucus") concerning the gift and campaign account restrictions of the Political Reform Act (the "Act").¹

Please note that the Commission does not provide advice concerning conduct which has already occurred. (Regulation 18329(b)(8)(A).) Accordingly, the advice provided below should not be construed as approving or disapproving any actions which have already taken place.

QUESTIONS

1. May the Caucus establish a bank account ("Caucus scholarship account") to receive donations to provide scholarships to the children of Assemblywoman Jackie Speier, to be controlled by Senator Watson and Assemblywoman Betty Karnette?

2. If it is permissible to establish the Caucus scholarship account, are there any limitations on the donation of the funds in the account directly to Assemblywoman Speier's children or to a separate trust fund established for her children by someone other than the Caucus?

¹ Government Code Sections 81000-91015. All statutory reference are to the Government Code unless specified otherwise. Commission regulations are located in Title 2, Division 6 of the California Code of Regulations.

CONCLUSIONS

1. The Caucus scholarship account may be established by the Caucus and controlled by Senator Watson and Assemblywoman Karnette. However, if any of the monies in the account are not used to provide scholarships for the children of Assemblywoman Speier, then Senator Watson and Assemblywoman Karnette may be receiving a reportable gift that is subject to the Act's gift limits.

2. To the extent that the monies donated to the Caucus scholarship account are used to provide scholarships for the children of Assemblywoman Speier, in some circumstances there may be a reportable gift made to her. If the scholarships are made available to the children after they have attained the age of 18 and Assemblywoman Speier is given no discretion or control over the monies, there is no reportable gift to her. However, if the scholarships are made available for the children's use prior to them having attained the age of 18 or if Assemblywoman Speier is given discretion or control over the monies, the monies provided will be a reportable gift to Assemblywoman Speier and subject to the applicable gift limits. In such a case, the gift to Assemblywoman Speier is made when the funds are actually paid from the Caucus scholarship account on behalf of the children or to Assemblywoman Speier. The source of the gift will not be Senator Watson or Assemblywoman Karnette but the specific donor or donors to whom the payment from the account is attributed. Furthermore, if the Caucus scholarship account funds are a gift to Assemblywoman Speier, Senator Watson and Assemblywoman Karnette would be the intermediaries for the gift.

If the Caucus scholarship account monies are paid by the Caucus to a separate trust fund established for Assemblywoman Speier's children by someone other than the Caucus, the monies donated to the Caucus scholarship account will be a gift to Senator Watson and Assemblywoman Karnette because they then will have exercised discretion and control over the Caucus scholarship account monies. Therefore, we recommend against this action.

FACTS

The untimely death of Dr. Steven Sierra, Assemblywoman Jackie Speier's husband, prompted the Women Legislators Caucus, chaired by Senator Watson, to circulate a memorandum to members of the Legislature and the Capitol community.

The memorandum announces the establishment of a scholarship fund for the children of Assemblywoman Speier and solicits donations to the fund. The fund is called the Jackie Speier Children's Discretionary Fund. Senator Watson and Assemblywoman Karnette, who is Vice Chairperson of the Caucus, are signatories on the fund's bank account.

Assemblywoman Speier has a five year old son and is expecting another child in early August. She is also a past chairperson of the Caucus.

Other persons have also established a trust fund for Assemblywoman Speier's children and are seeking donations to that fund.

ANALYSIS

Normally, when a payment is made to a legislator and the legislator does not provide something of equal value in exchange, it is considered to be either a political contribution or a gift to that legislator. (See Sections 82015 and 82028.)

Such a payment is a contribution if it is made for a political purpose. (Section 82015; Regulation 18225.) Otherwise, the payment is normally considered to be a gift. (Section 82028.)

Here, the funds solicited by the Caucus are not paid for a political purpose, but instead are being paid to provide financial assistance to Assemblywoman Speier's children. Therefore, we do not consider payments to the fund established by the Caucus for Assemblywoman Speier's children to be a political contribution.² Instead, they are gifts. The issue is whether, or under what circumstances, these payments become gifts to Assemblywoman Speier, Senator Watson or Assemblywoman Karnette, or are merely non-reportable gifts to Assemblywoman Speier's children.

The Act regulates gifts to legislators in four ways. Gifts of \$250 or more may create a conflict of interest for the legislator and require her to disqualify herself when participating in governmental decisions which financially affect the donor of the gift. (Sections 87100-87103.) Gifts from individual lobbyists or lobbying firms may not exceed \$10 in a calendar month. (Sections 86203 and 86204.) Gifts totalling \$50 or more from a single

² We base our conclusion that these are not political contributions to Senator Watson or Assemblywoman Karnette on the unique and personal circumstances of this matter. Assemblywoman Speier is not only a legislative colleague of theirs but also a member of the Women Legislators Caucus. For example, we distinguish this situation from one where an elected official establishes and controls a fund and solicits donations to award scholarships to students in the official's district. The purpose of that type of fund is political in nature because of the publicity and good will the official is likely to receive. We would view donations to such a fund to be contributions to the official and thus subject to the campaign reporting and single account requirements of the Act.

source in a calendar year must be reported on a legislator's statement of economic interests. (Section 87200.) Finally, gifts from a single source cannot exceed \$270 in a calendar year unless an exception to the gift limits applies.³ (Section 89504.)

Commission Regulation 18941(b) states the general rule that an official "receives" a gift "when he or she takes any action exercising direction or control over the gift." On this basis, it appears that, because they control an account to which persons will donate monies for Assemblywoman Speier's children, Senator Watson and Assemblywoman Karnette are themselves receiving a gift when such donations are made to the Caucus scholarship account.

However, under the circumstances you describe we believe that Commission Regulation 18945 controls. Regulation 18945(a)(1) states that when a payment⁴ is made to a third party and the third party in fact directs and controls use of the payment to make a gift, the third party is the source of the gift. When a donor makes a payment to a third party and earmarks the payment for a specific official, the donor is directing and controlling the making of the gift and is thus the maker of the gift.

The scholarship account the Caucus has established makes Assemblywoman Speier's children the earmarked recipients for the account's proceeds. To the extent that the account monies are actually used by Senator Watson and Assemblywoman Karnette for this purpose, there is no gift made to Senator Watson or Assemblywoman Karnette. Instead, there is a gift from the donor to Assemblywoman Speier's children. If some or all of the account monies are not used to make a gift to Assemblywoman Speier's children, then Senator Watson and Assemblywoman Karnette will have received gifts in the amounts not used. These gifts would be subject to the Act's gift restrictions set forth above.

For those Caucus scholarship account monies provided to or for the benefit of Assemblywoman Speier's children, additional issues arise as to whether a gift is being made to Assemblywoman Speier herself, whether it violates the Act's gift limits, and who the source of the gift would be.

³ The gift limitation amount is revised in each odd-numbered year, based upon changes in the Consumer Price Index. (Section 89504; Regulation 18954.)

⁴ Section 82044 defines "payment" as a "... payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value"

Regulation 18944⁵ sets forth a test for determining whether a gift to a family member of a public official is in fact a gift to the official. Under the regulation, a gift given directly to an official's family member is not a gift to the official unless it is used or disposed of by the official. (Regulation 18944(a).) Furthermore, a gift given to the official for a family member is not a gift to the official unless the official exercises discretion and control over the gift's use. (Regulation 18944.(c).) In any event, when an official enjoys a direct benefit from the gift, it is deemed to be a gift in full to the official. (Regulation 18944(d).)

Thus, under the regulation, Assemblywoman Speier will receive no reportable gift if: (1) she does not use, dispose of or exercise discretion and control over the Caucus scholarship account monies; and (2) the Caucus scholarship account monies are not provided to her children while they remain her dependents. However, if Assemblywoman Speier uses, disposes of or exercises discretion and control over the account monies provided by the Caucus, she will have received a gift of those funds. Furthermore, even if she has no control over the funds, but they are paid from the Caucus scholarship account for the benefit of the children while they are Assemblywoman Speier's dependents, she will have received a direct benefit from the children's gift and thus a reportable gift. This will remain the case so long as the children are her dependents. We have defined "dependent child" in previous advice to mean a natural or adopted child who is under the age of 18 and eligible to be claimed as a dependent for tax purposes. (Staff Memorandum, No. 78-151.)

In the event payments from the Caucus scholarship account are gifts to Assemblywoman Speier, the source of the gift would be each donor to the account and not the Caucus, Senator Watson or Assemblywoman Karnette. Furthermore, the gift is made to Assemblywoman Speier when the monies are paid from the Caucus scholarship account. To ascertain when a particular donor is making a gift to Assemblywoman Speier, the Caucus should keep records so that each gift is attributed to the appropriate donor when made. This will assist Assemblywoman Speier in reporting these gifts. We also direct your attention to Section 86112.5, which requires lobbyists, lobbying firms and lobbyist employers to provide notification of gifts made. Assemblywoman Speier may receive up to \$270⁶ per donor for each year she remains subject to the gift limitations of Section 89504. If the donor is a lobbyist or lobbying firm, the limit is \$10 per month. (Section 86203.)

⁵ Regulation 18944, formerly 18726.2, was renumbered by the Commission on November 5, 1993.

⁶ Subject to revisions to the gift limitation amount. See footnote 3, supra.

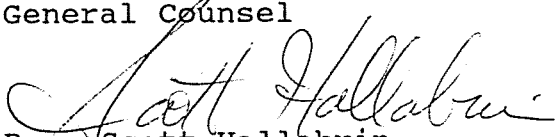
Also, please note that if Assemblywoman Speier is the recipient of a gift as set forth above, Senator Watson and Assemblywoman Karnette will be intermediaries of the gift and must be reported as such by Assemblywoman Speier. (Section 87210.)

Finally, you ask if the Caucus, instead of giving the Caucus scholarship account monies directly to Assemblywoman Speier's children, can give them to a separate trust fund that has been established for her children by someone other than the Caucus. If the Caucus takes this action, the Caucus scholarship account monies will be gifts to Senator Watson and Assemblywoman Karnette. Therefore, we advise against this. We concluded above that monies donated to the Caucus' scholarship account are not gifts to Senator Watson and Assemblywoman Karnette so long as they directed the monies to Assemblywoman Speier's children as advertised when the Caucus solicited the funds. In such a case, Senator Watson and Assemblywoman Karnette are merely a conduit from the donors to the children and have no discretion on where the funds go. However, if they deviate from the advertised use of the funds by giving them to a third entity (the trust) which itself has discretion on use of the funds, they are themselves exercising discretion and control over the Caucus scholarship account monies and thus receiving a gift. (See Regulation 18941(b).)

Should you have any questions, please contact me at 916/322-5901.

Sincerely,

Steven G. Churchwell
General Counsel


By: Scott Hallabrin
Assistant General Counsel