



California Fair Political Practices Commission

August 25, 1994

Helen N. Hanna
California School Boards Association
3100 Beacon Boulevard
P.O. Box 1660
West Sacramento, CA 95691

Re: Your Request for Informal Assistance
Our File No. I-94-243

Dear Ms. Hanna:

You have requested informal assistance concerning new "ethics" provisions of the Political Reform Act (the "Act")¹ which will further limit the receipt of gifts and honoraria by specified public officials effective January 1, 1995.²

QUESTION

What limitations will exist, effective January 1, 1995, on the acceptance of honoraria by local elected officials, elected or appointed members of the governing board of a special district, or designated employees of a local government agency?

CONCLUSION

Subject to certain exceptions set forth below, these public officials will be prohibited from accepting honoraria, and they will be subject to a gift limit, equal to the \$270 gift limitation applicable to elected state officers which will be adjusted biennially.

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

² 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).)

ANALYSIS

You ask for general guidance concerning the application of a new ethics law (Chapter 36, Stats. 1994), to be effective January 1, 1995. As amended, Section 89501(a) provides:

(a) No local elected officeholders, elected or appointed members of the governing board of a special district, or designated employee of a local government agency shall accept any honorarium, as defined in subdivisions (b), (c), and (e) of Section 89502.

Thus, the new law will prohibit the specified public officials from accepting any honoraria for any speech given or article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501(a), as amended, and Section 89502(b).) In addition, these public officials will also be prohibited from accepting any gifts³ in excess of \$270 or more in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith. (Section 89501(b), as amended.)⁴

The general question you pose is whether remuneration received by school administrators (who are designated employees of a local school district) for making speeches and writing articles to be published in periodicals will constitute prohibited "honoraria" when the amendments to Section 89501 take effect.

Honoraria

The amendments to Section 89501 incorporate the definition of the term "honorarium," as defined in subdivision (b) of Section 89502, as well as applicable exclusions and a provision for return of honorarium. (See subdivisions (c) and (e), Section 89502 and Regulations 18932.4, 18932.5 and 18933 (copies enclosed).) Thus, existing Commission regulations which are applicable to gifts and honoraria apply.

³ Gifts of \$50 or more are reportable. (Section 87027.) In addition, gifts of \$250 or more may subject a public official to disqualification. (Section 87103(c).)

⁴ The new statute provides for a \$250 gift limit in any calendar year, to be adjusted to make it equal to the prevailing gift limitation amount applicable to elected state officers in effect on January 1, 1995, which will be \$270 until adjusted by the Commission. This gift limit will be adjusted biennially.

Section 89502 provides in pertinent part:

(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.

(c) "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, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches....

* * * *

(e) This section does not apply to any honorarium which is not used, and within 30 days after receipt, is either returned to the donor or delivered to the Controller for donation to the General Fund without being claimed as a deduction from income for tax purposes.

Pursuant to Section 89501, as amended, the specified public officials will be prohibited from accepting an honorarium from any source.⁵ However, earned income⁶ for providing personal services which are customarily provided in connection with a bona fide business, trade, or profession is specifically exempted from the scope of the honoraria prohibitions, provided the sole or predominant activity of the business, trade, or profession is not making speeches.⁷

⁵ The new amendments to the statute do not limit the ban on honoraria to payments received from any particular source. Thus, the prohibition will apply regardless of whether the source is a disclosable source on a statement of economic interests.

⁶ Earned income means income from wages, salaries, professional fees, and other amounts received or promised to be received as compensation for personal services rendered. (Section 82030.5; Regulation 18932.)

⁷ For purposes of Government Code Sections 89501, 89502(b), 89503(b) and 89506(a)(1), "speech given" means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. A "speech given" does not include a comedic, dramatic, musical, or other similar artistic performance. (Regulation 18931.1.)

Regulation 18932.2 defines "bona fide profession of teaching" for purposes of the gift and honoraria provisions. Regulation 18932.2 provides:

For purposes of Government Code Sections 89502, 89503(b), and 89506(c)(3), an individual is presumed to be engaged in the bona fide profession of teaching in any of the following circumstances:

(a) The individual is under contract or employed to teach at a school, college, or university accredited or licensed by an agency of the State of California; or by an agency of any other state in the United States; or by an agency of the Federal government; or by a bona fide independent accrediting organization.

(b) The individual receives payment for teaching a course, presented to assist in maintenance or improvement of professional skills or knowledge where the course provides credit toward continuing education requirements of the pertinent profession.

(c) The individual receives payment for teaching students enrolled in an examination preparation program, such as a State Bar examination review course.

Based on your letter and our telephone conversation of August 5, 1994, you are particularly concerned about the application of the new laws to school administrators, professional educators, and other officials who may be employed by a school district. Clearly, payments made to public officials who are involved in the bona fide profession of teaching,⁸ as defined above, are reportable income, and not honoraria, if any of the provisions of Regulation 18932.2 apply.

⁸ We have advised, for example, that a designated employee of the Legislature was engaged in the bona fide profession of teaching where the employee taught an undergraduate college course under contract with the University of Southern California. (Hodson Advice Letter, No. A-92-648.) However, we have advised that a local school board member who addressed audiences at various colleges and universities would not be involved in the bona fide profession of teaching merely because he addressed educational issues. (Furutani Advice Letter, No I-93-063.) Moreover, the activities of a professional speaker clearly fall within the general definitions of activities covered by the honoraria prohibitions. Thus, we have also advised that payments received as a professional speaker or as a member of a speakers' bureau are honoraria. (Miller Advice Letter, No. A-90-770.)

Where an official is not involved in the bona fide profession of teaching, it is still possible to receive income as part of a bona fide business, trade, or profession where speaking is one of the services customarily provided in connection with the bona fide business, trade, or profession. (Furutani Advice Letter, supra.) However, if making speeches is the predominant activity⁹ of the business, trade, or profession, payments for the speeches would constitute prohibited honoraria.

Articles Published

Regulation 18931.2 provides:

(a) For purposes of Government Code Sections 89501, 89502, and 89503, an "article published" means a nonfictional written work:

(1) That is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and

(2) That is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication.

(b) For purposes of this regulation, a person receives payment for an article published if he or she receives a payment for:

(1) Drafting any part of an article published, except activities solely involving secretarial assistance.

(2) Being identified as an author of or contributor to the article.

(c) "Article" does not include books, plays, or screenplays.

You also ask about articles written for publication in a periodical. As noted above, a payment received for nonfictional

⁹ For purposes of Section 89502(c), speechmaking is presumed to be the "predominant activity" of an official's business, trade, or profession which has been in existence for one year or more in the following circumstances: (1) during the 12-month period prior to and including the date of the speech, more than 50 percent of the hours spent on the official's business, trade, or profession is devoted to the preparation and/or delivery of speeches; or (2) during the 12-month period prior to and including the date of the speech more than 50 percent of the gross income of the official's business, trade, or profession is derived from the preparation and/or delivery of speeches. (Regulation 18932.3.)

written work published in a periodical, journal, newspaper, magazine, pamphlet, or similar publication would constitute a prohibited honoraria. This is true irrespective of whether the article is written on a governmental topic or not. (Krehbieli Advice Letter, No. A-92-434.) However, a nonfiction written work produced in connection with the practice of a bona fide business, trade, or profession would not be an "article published" for purposes of the honoraria ban of Section 89502, as amended.

I trust this letter has addressed your concerns. Should you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.¹⁰

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
Counsel, Legal Division

Enclosures

¹⁰ 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.