

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

October 18, 1995

Gloria White-Brown
So. Coast Air Quality Mgmt. District
P.O. Box 4940
Diamond Bar, CA 91765-0940

Re: Your Request for Advice
Our File No. A-95-290

Dear Ms. White-Brown:

This is in response to your request for advice on behalf of South Coast Air Quality Management District Board Member Hugh Hewitt under the honoraria provisions of the Political Reform Act.^{1/}

QUESTION

Are the payments Mr. Hewitt receives for speaking engagements related to his television show prohibited payments under the Act?

CONCLUSION

Yes. The payments Mr. Hewitt receives are prohibited "honoraria" under the Act.

FACTS

Mr. Hugh Hewitt was recently appointed to the South Coast Air Quality Management District ("District"). In his private capacity he is a co-host of a daily television program in which issues of public interest are discussed. Additionally, Mr. Hewitt is a practicing attorney with a private law firm.

^{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 18000-18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

During the four years prior to becoming a board member, Mr. Hewitt was frequently paid to appear as a speaker. You were informed that it is common practice for media figures, such as Mr. Hewitt, to be paid for speaking engagements.

You believe that Mr. Hewitt's media position with the television station, as well as his position as an attorney, each meet the definition of a bona fide business, trade or profession within the meaning of Section 89502(c). You contend that if Mr. Hewitt were to accept compensation for such speaking engagements in the future, such compensation would not constitute prohibited honoraria.

ANALYSIS

Section 89501 provides that no appointed member of the governing board of a special district shall accept any honorarium. The term "honorarium" means 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. (Section 89502(a).)

The definition of "honorarium" in the Act does not include "earned income"^{2/} 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. (Section 89502(b).)

A business is considered to be a "bona fide" business if the owner of the business has maintained books and records of accounting consistent with the operation of a business and has filed tax returns in connection with the operation of the claimed business. (Regulation 18932.1(a).)

Additionally, the Commission has held that "honorarium" does not include earned income for personal services if:

- (1) The services are provided in connection with an individual's business or the individual's practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, pursuant to California Code of Regulations, Title 2, Sections 18932.1 through 18932.3; and

^{2/} "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.)

(2) The services are customarily provided in connection with the business, trade or profession.

(Regulation 18932(a)
emphasis added.)

We believe Mr. Hewitt's services as a co-host of a television program is earned income in connection with his employment with the television station. The payments from the television station are not in question here. Rather, it is the payments which he receives for appearances as a speaker which are in question.

You indicated that you were informed that it is common practice for media figures, such as Mr. Hewitt, to frequently be paid to appear as a speaker. This may be true. However, for the "earned income" exception to apply to these payments, the speaking engagements must be in connection with his employment as a co-host of a daily television program. It does not appear from the facts that his appearances as a speaker are in any way related to his employment with the television station. Rather, his presence on the daily television program affords him exposure to the public which generates an interest by other persons to request he appear and speak at their private or public meeting, or other social gathering.

Those payments are not part of Mr. Hewitt's personal services to the television station. Such payments are made by other persons who request that he appear as a speaker at their public or private meeting, or other social gathering. We therefore conclude that future payments which he may receive to appear as a speaker do not qualify as "earned income."

Additionally, you contend that Mr. Hewitt's practice of law is a bona fide business, trade or profession and the exception should apply. We agree that practicing law is a bona fide business, trade or profession. Any payments an attorney receives for an oration in a courtroom, or for teaching law at a law school, would not be "honoraria." However, it is not customary practice for lawyers to co-host daily talk shows. Further you indicated that the requests for his appearance as a speaker is provided to him because he is a "media figure." Neither the talk show, nor the appearances which are generated as a result of the show, are in connection with his bona fide law practice. We therefore cannot conclude that any payment Mr. Hewitt receives for appearances as a speaker is in connection with his practice of law.

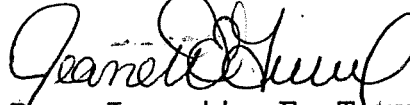
Accordingly, Mr. Hewitt is prohibited from receiving any payments for any speech given, at any public or private

conference, convention, meeting, social event, or like gathering. Such payments are prohibited honoraria under the Act.

If you wish to discuss this, or need additional information, please feel free to call me at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

SGC/JET/jt