

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

December 5, 1995

Honorable Jim Morrissey  
Assemblymember, 69th District  
930 West 17th St., Suite C  
Santa Ana, CA 92706

Re: Your Request for Advice  
Our File No. A-95-388

Dear Assemblymember Morrissey:

This is in response to your letter requesting advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

Moreover, our advice is limited to the provisions of the Act. We do not advise on restrictions that may be imposed on Legislators by the Legislature itself, or by other bodies of law outside the Act.

QUESTIONS

1. Does the Act prohibit you using personal funds to pay for travel and accommodations related to a mission to Vietnam to visit an American citizen imprisoned there and to negotiate with the Vietnamese government about the citizen's release?

(a) Will you incur any reporting obligations by virtue of this expenditure of personal funds?

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

2. Does the Act prohibit you using personal funds to pay for the travel and accommodations of a staffmember where the travel and accommodations are in connection with a mission to Vietnam to visit an American citizen imprisoned there and to negotiate with the Vietnamese government about the citizen's release?

(a) Will you incur any reporting obligations by virtue of this expenditure of personal funds?

(b) Does the Act impose obligations on the staffmember if the staffmember is not a designated employee?

3. May you use campaign funds to pay for the travel and accommodations of a staffmember where the travel and accommodations are in connection with a mission to Vietnam to visit an American citizen imprisoned there and to negotiate with the Vietnamese government about the citizen's release?

(a) Will you incur any reporting obligations by virtue of this expenditure?

(b) Does the Act impose obligations on the staffmember if the staffmember is not a designated employee?

(c) Are there any restrictions placed on the use of the campaign funds?

4. May a third party, such as a local independent committee, pay for the travel and accommodations of the staffmember where the travel and accommodations are in connection with a mission to Vietnam to visit an American citizen imprisoned there and to negotiate with the Vietnamese government about the citizen's release?

(a) Will you incur any reporting obligations by virtue of this payment?

(b) Does the Act impose obligations on the staffmember if the staffmember is not a designated employee?

(c) Are there any restrictions placed on the use of the funds?

#### CONCLUSIONS

1. The Act would not prohibit your use of personal funds to pay for travel expenses and accommodations in connection with a mission to Vietnam to visit and advocate on behalf of an American citizen imprisoned in that country.

(a) Such payments need not be reported.

2. The Act would not prohibit your use of personal funds to pay for travel expenses and accommodations for a staffmember in connection with the mission.

(a) You would not be required to report such payments.

(b) In addition, since your staffmember is not a designated employee, the Act would not impose any obligations on the staffmember.

3. Campaign funds may be used.

(a) You must report all your campaign expenditures.

(b) However, if the staffmember is not a designated employee of the Legislature, the staffmember will not incur any obligations under the Act.

(c) Use of campaign funds is limited to the business portions of the trip as set forth below.

4. If any independent committee pays for travel expenses and accommodations for the staffmember that you choose, these payments would be considered gifts to you.

(a) Gifts are subject to a \$280 limitation, and must be disclosed on your statement of economic interests. In addition, receipt of gifts may result in the obligation to disqualify from certain decisions that materially financially affect the donor.

(b) If the staffmember is not a designated employee of the Legislature, the staffmember would have no obligations under the Act.

(c) Finally, the Act would not restrict the use of funds received as a personal gift (so long as they are received within the limits) except to require disclosure of the receipt of the gift.

#### FACTS

You have been asked to travel to Vietnam to visit and advocate on behalf of an American citizen imprisoned in that country. You plan on taking one staffmember from your Assembly staff. You are now contemplating how the trip should be paid for. According to information provided by your office, an independent committee has volunteered to fund part of the trip.

## ANALYSIS

### Personal Funds

#### A. Your Travel

Generally, the Act does not control the use of an officeholder's personal funds. Where the expenditures are campaign related, the Act does require that any "personal funds which will be utilized to promote the election of the candidate shall be deposited in the account prior to expenditure." (Section 85201(d).)

Campaign expenses include payments for: fundraising and campaign strategy expenses, political consultants, campaign treasurers, pollsters, campaign staff, voter registration and get-out-the-vote drives, and mass mailings, political advertising, opinion polls or surveys, and other communications that make reference to the officer's future election or status as a candidate for a future term of office, or is made by an incumbent officer within three months prior to an election for which he or she has filed any of the following: a candidate intention statement, declaration of candidacy or nomination papers, or any other documents necessary to be listed on the ballot. (Regulation 18525.) Thus, you need not deposit personal funds used for this trip in the campaign bank account before expenditure.<sup>2</sup>

Moreover, some expenditures of personal funds are reportable. For example, Section 84211 has been construed to require that all contributions and independent expenditures made by the filer be reported. This requirement has been construed by the Commission to include such expenditures made from personal funds. (See, In re Lui (1987) 10 FPPC Ops. 10.) However, obviously not every use of personal funds by an officeholder would be reportable. (See e.g., In re Tuteur (1975) 2 FPPC Ops. 10.) In this case, you are one year from your next election and your office informed us that this trip was not campaign or election related. Under these facts, the payments from your personal funds for the travel would not be reportable.

#### B. Staffmembers

You also asked whether you could use personal funds to pay for travel expenses and accommodations for a staff member. Generally, the same analysis set forth above would apply. However, the payment of the staffmember's expenses raises other issues with respect to the staffmember's receipt of the payment. Under current law, designated employees of the Legislature are subject to gift limitations. Moreover, designated employees have

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<sup>2</sup> If you use personal funds, you may be reimbursed from your campaign committee consistent with the requirements of Section 89511.5.

reporting requirements and are subject to conflict of interest disqualification obligations.

However, your office confirmed on November 22, 1995, that the staffmember you are considering has no filing obligations under the Legislature's conflict of interest code. Thus, the staffmember's receipt of the payment would not result in any obligations for the staffmember under the provisions of the Act.

#### Campaign Funds

You have also asked if you may use campaign funds to pay for transportation and accommodations in connection with the Vietnam trip. The general rule of the "personal use" provisions of the Act which regulate the expenditure of campaign funds is that any expenditure of campaign funds must be, at a minimum, reasonably related to a political, legislative, or governmental purpose. However, where an expenditure confers a substantial personal benefit on the candidate or elected officer, the expenditure must be directly related to a political, legislative, or governmental purpose.<sup>3</sup> (Section 89512.)

Moreover, the personal use law sets forth specific standards concerning specific types of expenditures. Section 89513(a)(1), which deals with travel provides:

(a) Campaign funds shall not be used to pay or reimburse the candidate, the elected officer, or any individual or individuals with authority to approve the expenditure of campaign funds held by a committee, or employees or staff of the committee or the elected officer's governmental agency for travel expenses and necessary accommodations except when these expenditures are directly related to a political, legislative, or governmental purpose.

(1) For the purposes of this section, payments or reimbursements for travel and necessary accommodations shall be considered as directly related to a political, legislative, or governmental purpose if the payments would meet standards similar to the standards of the Internal Revenue Service pursuant to Sections 162 and 274 of the Internal Revenue Code for deductions of travel expenses under the federal income tax law.

(2) For the purposes of this section, payments or reimbursement for travel by the

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<sup>3</sup> A substantial personal benefit is defined as a direct personal benefit to the candidate or elected officer of \$100 or more. (Section 89511(b)(2).)

household of a candidate or elected officer when traveling to the same destination in order to accompany the candidate or elected officer shall be considered for the same purpose as the candidate's or elected officer's travel.

Thus, the test set forth in Section 89513(a)(2) is whether there is a direct relationship between a political, legislative or governmental purpose and the trip. Section 89513(a)(2) provides that payments or reimbursements for travel and necessary accommodations shall be considered as directly related to a political, legislative, or governmental purpose if the payments would meet standards similar to the standards of the Internal Revenue Service pursuant to Sections 162 and 274 of the Internal Revenue Code for deductions of travel expenses under the federal income tax law.

Since this trip appears to be governmental in nature, campaign funds may be used for ordinary and necessary expenses associated with the travel and accommodations consistent with the Internal Revenue Service standards for the deduction of "business expenses" in connection with your position. (See e.g., Bagatelos Advice Letter, No. A-93-309/A-93-441.)

The Internal Revenue Code sets forth general rules which permit the deduction of all ordinary and necessary traveling expenses while away from home in the pursuit of a trade or business. Pursuant to this section, campaign funds may be used for "business portions" of the trip. To the extent that any day is not a business day (such as days on which there are no meetings or formal activities), campaign funds may not be used.<sup>4</sup> Moreover, personal activities not related to a governmental purpose may not be paid for with campaign funds, even if those activities occur on a business day. The amount of campaign funds that can be utilized for transportation costs can be determined by looking at the ratio of business-related days to the total number of days in the Vietnam.

Finally, all expenditures of campaign funds for travel must be reported. Section 84211(j)(7) provides that in the case of an expenditure made to pay or reimburse the travel expenses or necessary accommodations of a candidate, his or her representative, or a member of the candidate's immediate family, the date, destination, and total expenditure for each trip must be reported.

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<sup>4</sup> A travel day is considered a business day if followed immediately by a day that is devoted, at least in part, to a business purpose. Moreover, where a weekend falls between business days, the weekend will also be counted as business time.

Donations from Third Parties

Generally, payments received by a candidate are either considered gifts or contributions. Regulation 18950.4 provides:

(a) Except as provided in Section 18727.5,<sup>5</sup> a payment made to an elected officer or candidate for his or her transportation, lodging, or subsistence is a gift unless the transportation, lodging, or subsistence provided to the elected officer or candidate is in "direct connection" with campaign activities, including attendance at political fundraisers.

(1) Any payment made to an elected officer or candidate for his or her transportation, lodging, or subsistence, during the six month period prior to an election in which the elected officer or candidate is to be voted upon shall be considered "in direct" connection with campaign activities if the payment is for necessary transportation, lodging, or subsistence, used specifically for the purpose of the elected officer's or candidate's:

(A) Participation in candidate forums, debates or similar voter gatherings at which he or she makes a speech; or

(B) Attendance at meetings with campaign staff or political consultants to develop or implement campaign strategy.

(2) A payment made to an elected officer or candidate for necessary transportation to, or lodging and subsistence at, an event described in subdivision (a)(1)(A) or subdivision (a)(1)(B), but not made within the six month period prior to the election in which the elected officer or candidate is being voted upon, shall be considered a gift unless it is clear from the surrounding circumstances that the payment is made

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<sup>5</sup> Regulation 18727.5 provides an additional exemption for travel payments, however, it too is limited to "campaign" expenses.

directly in connection with campaign activities.

Emphasis added.

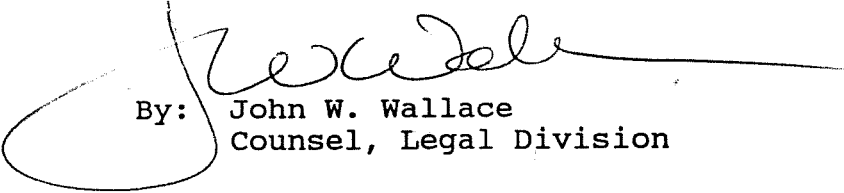
Thus, a payment made to you from a third party would be considered a gift, and absent an exception, would be reportable and subject to the gift limits of the Act.

You have asked whether a third party may pay for your staffmember's travel expenses. Regulation 18941(b) provides that "a gift is 'received' or 'accepted' when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift." (See Bagatelos Advice Letter, supra.) Thus, where a third party makes a payment to a staffmember of your choosing, you would be deemed the recipient of the gift and the gift would be subject to all the Act's requirements related to gifts.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.<sup>6</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

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<sup>6</sup> 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.