

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

January 19, 1996

Mr. Grey Williams
California Legislature
Assembly Republican Caucus
Office of Member Services
1020 N Street, Suite 408
Sacramento, California 95814

Re: Your Request for Informal
Assistance
Our File No. I-95-405

Dear Mr. Williams:

This is in response to your letter requesting advice about provisions of the Political Reform Act (the "Act")¹ concerning travel. Because your letter does not state the specific parties or activity involved, we are treating it as a request for informal assistance. (Regulation 18329(c).) Accordingly, this letter discusses the laws and regulations that are generally applicable to your question. Assemblymembers who have specific questions regarding travel should contact the Commission.

QUESTION

If a member of the State Assembly is flown round trip from the Capitol to his or her Assembly district to speak on legislative issues to the group providing the transportation, is the flight reportable as a gift or as an in-kind contribution? For example, Assemblymembers might be speaking before groups such as rotary clubs, agricultural groups, or physicians.

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.

CONCLUSION

If a State Assemblymember travels within California to an event at which the Assemblymember gives a speech, any transportation provided directly in connection with that event is not subject to the \$280 gift limit and is not reportable on the Assemblymember's statement of economic interests. If the travel is in direct connection with the Assemblymember's campaign activities, the payment would be considered a contribution to the Assemblymember and must be reported on his or her campaign disclosure statements.

ANALYSIS

1. Gift. As a general rule, payments for travel or free travel provided to public officials by third parties constitute gifts to the public officials subject to the \$280 gift limit. (Sections 82028 and 89503.) However, an exception may apply when a public official travels within California to an event at which the official gives a speech or participates in a panel or seminar. In this case, any transportation provided directly in connection with that event is not subject to the \$280 gift limit and is not reportable on the official's statement of economic interests. (Regulations 18942(a)(9) and 18950.3.)

Regulation 18950.3 provides as follows:

Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, are not payments and need not be reported by any filer.

For this exception to apply, the public official must "give a speech, participate in a panel or seminar, or provide a similar service." To give a speech means to make a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. "Giving a speech" does not include participating in a dramatic, musical, comedic or other similar artistic performance. (Regulation 18931.1.) Merely being a "discussant" at a conference does not qualify as giving a speech or oral presentation as required by the regulation. (Hoehn Advice Letter, No. I-92-392.) Similarly, an Assemblymember's holding informal meetings with constituents or a few individuals who are members of a particular group would not qualify.

2. Contribution. If the transportation is directly in connection with the Assemblymember's campaign activities, any payments for such transportation would constitute a contribution.

Under Section 82015 of the Act and Regulation 18215 (copies enclosed), a contribution is any payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure, or if it is received by or made at the behest of a candidate, a controlled committee, a political party committee, or a political action committee.

Further, Regulation 18950.4 states that the cost of transportation will be considered a contribution if it is directly connected with a candidate's campaign activities. The regulation provides as follows:

(a) Except as provided in Section 18727.5,² 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 Regulation 18727.5 states that a candidate's campaign travel costs paid for by a committee and reported on that committee's disclosure reports are not considered a gift or income to the candidate or official and need not be disclosed on the candidate or official's statement of economic interests.

(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 directly in connection with campaign activities.

(b) When a payment is made to an elected officer or candidate for his or her necessary lodging and subsistence or transportation in direct connection with attendance at a political fundraiser or an event listed in subdivision (a)(1)(A) or subdivision (a)(1)(B), which fundraiser event is conducted to benefit another elected officer or candidate, or to benefit a committee as defined in Government Code Section 82013(a), the payment is a contribution to the officer, candidate, or committee benefiting from the fundraiser.

Under this regulation, if an Assemblymember is flown round trip from Sacramento to his or her district to attend his or her own political fundraiser or to conduct other activities directly connected with his or her campaign, it will constitute a contribution to the Assemblymember. During the six months before the candidate's election, any transportation provided to the candidate to speak at forums, debates, or other voter gatherings, or to meet with campaign staff or political consultants will also be considered a contribution.

I trust this provides you with some guidance. If you have any further questions regarding this matter, please contact me at 916/322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Counsel, Legal Division

Enclosures

SGC:HPW:ak