



RAVI MEHTA  
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

January 24, 1996

Roger Cochran  
Staff Toxicologist  
Department of Pesticide Regulation  
1020 N Street  
Sacramento, California 95814

Re: Your Request for Advice  
Our File No. A-96-015

Dear Mr. Cochran:

This is in response to your request for advice regarding your responsibilities as a designated public official under the gift and honoraria provisions of the Political Reform Act (the "Act").<sup>1</sup>

QUESTION

May a corporation pay travel expenses associated with your participation in a two-day workshop the corporation is sponsoring?

CONCLUSION

Payments for transportation, related lodging and subsistence received in connection with participation in the workshop you have described are gifts subject to the \$280 annual limit on gifts. In addition, if you accept the gifts, you must disqualify yourself from any decision which will have a foreseeable material financial effect on DowElanco in the 12-month period after you receive the gifts.

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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.

### FACTS

You are a Staff Toxicologist (Specialist) with the California Environmental Protection Agency, Department of Pesticide Regulation. In that capacity, DowElanco has asked you to participate in a workshop in North Carolina to identify research and information needed to better characterize the neurotoxic risk associated with chlorpyrifos. The principle objective of the workshop is to identify the data requirements of regulatory agencies which will be needed to give an appropriate estimate of these risks. You were selected on the basis of both a publication you authored on the risk of dietary exposure to chlorpyrifos and because you work for a governmental regulatory agency.

The workshop will consist of a series of discussions and break-out sessions. The material you have sent us on the workshop indicates that there will be "leaders" and "facilitators" for each session. You will not be either a leader or facilitator, but DowElanco has requested you to be prepared to present information in the discussions about chlorpyrifos. If you attend, DowElanco will pay for your airfare to and from North Carolina and lodging expenses associated with participating in the workshop.

### ANALYSIS

Section 89502(c) provides that no designated employee of a state agency shall accept an honorarium from any source. An honorarium is defined as 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 89501(a).)

You have indicated that you are a designated employee of the Department of Pesticide Regulation. Thus, you may not receive an honorarium in consideration for your participation in the workshop. (Section 89502(c).)

The prohibition on receiving honoraria includes several exceptions that, as explained below, do not apply in your case. (Section 89501(c); Regulations 18950.1 and 18950.3.) Section 89506 provides, among other things, that payments, advances, or reimbursements for travel reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy are not prohibited or limited if either the travel is in connection with a speech given or the travel is provided by a governmental agency or bona fide nonprofit or educational institutions. (Section 89506(a).) Regulation 18931.1 defines "speech given," in relevant part, as "a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate."

The exception in Section 89506(a) does not apply in this case, however. The travel will be provided by a private corporation rather than a government or nonprofit organization.

In addition, the travel will not be in connection with a "speech given" as defined by Section 18931.1. In your case, you will be attending a two-day workshop. The workshop will include a series of discussions and break-out sessions at which you will be sharing information in roundtable discussions. You will not be either a leader or a facilitator in the discussions. Mere participation in a discussion group, even with advance preparation, does not qualify as a "speech given." (Attwater Advice Letter, No. 95-168; Hoehn Advice Letter, No. I-92-392.) Where the official is merely providing information, rather than making a formal presentation, the exception does not apply.

Section 89506(d)(3) provides another exception for payments reasonably connected with a "bona fide business, trade, or profession" which satisfy "the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code, are not honoraria or gifts unless the sole or predominant activity of the business, trade, or profession is making speeches." (Section 89506(c); Regulation 18950.1(e).) What constitutes a "bona fide profession" is not specifically defined in the statute, however, exceptions in a statute are to be strictly construed. (Julius Goldman's Egg City v. Air Pollution Control Dept. of Ventura County (1981) 116 Cal.App.3d 741.) Therefore, we have applied the "bona fide business, trade, or profession" exception only where the business or professional activity generates income independent of the public official's governmental employment or position. (See e.g. Hodson Advice Letter, A-92-648; Hunter Advice Letter, A-93-203.)

Payments for travel which do not fit within the exceptions outlined in Section 89506 are considered gifts subject to the gift limits in Section 89503. (Section 89506(b).)

Section 89503(c) provides that no member of a state board or commission, and no designated employee of a state agency, shall accept gifts with a total value of more than two hundred eighty dollars (\$280) in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Certain general exceptions apply to the receipt of gifts. For instance, 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. (Regulation 18950.3.)

The exception in Regulation 18950.3 is limited to participation in a speech, panel, seminar or similar service.

Mere participation in a discussion group is not included in the exception. As a result, the payments will not fit into the exception in 18950.3 and are subject to the \$280 limit on gifts to a designated employee.<sup>2</sup>

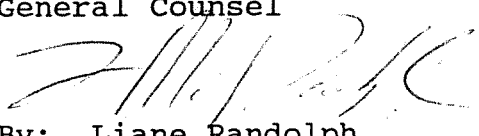
In sum, payments you receive for travel and subsistence for participation in the workshop sponsored by DowElanco are gifts subject to the \$280 limit on gifts to a designated employee.

Please keep in mind that Sections 87100 and 87103(e) and Regulation 18940.1 require you to disqualify yourself from any decision which will have a material financial effect on any donor of a gift of \$280. Therefore, should you choose to accept a gift of travel or subsistence from DowElanco, not only will the gift be subject to the \$280 gift limit, but you must disqualify yourself from decisions which will have a material financial effect on DowElanco if the value of gifts received from DowElanco totals \$280 during the 12 months prior to the decision.

If you have any further questions, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell  
General Counsel



By: Liane Randolph  
Counsel, Legal Division

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<sup>2</sup> The exception for a bona fide business, trade and profession in Regulation 18950.1 also applies to the gift limit, however, as noted above, that exception is not applicable to this situation.