

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

February 23, 1996

Cynthia P. Lavagetto
Deputy Executive Officer
Senate Rules Committee
State Capitol, Fourth Floor
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-96-050

Dear Ms. Lavagetto:

This is in response to your letter requesting confirmation of telephone advice provided to you on February 2, 1996, on behalf of Senator Peace. Your request pertains to the "gift" and "contribution" provisions under the Political Reform Act (the "Act").¹ We are treating your request as one for informal assistance pursuant to Regulation 18329.²

Both in your request for telephone advice and in your letter requesting confirmation, you indicated you would take action relating to the request unless you obtain immediate advice from the Commission. Please note that pursuant to Section 83114(b),

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 may be requested or rendered orally or in writing. 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)(2) and (3).)

only written advice from the Commission that is received prior to taking action provides immunity.³ We have answered as expeditiously as possible, give our limited resources and other pending advice requests.

QUESTION

Will participation by the Department of Motor Vehicles, certain legislative staffmembers, or a retail merchant in a child safety conference sponsored by Senator Peace result in gifts or campaign contributions to the Senator?

CONCLUSION

No gift or contribution to Senator Peace will result.

FACTS

Senator Peace has planned a constituent meeting in his district, which will be announced by him through a mailing to his constituents. The purpose for the constituent meeting is to discuss legislative issues regarding child safety. Because child fingerprinting has proven to be an effective tool for law enforcement in its efforts to improve child safety, the Department of Motor Vehicles and legislative staff will provide fingerprinting of young children in conjunction with the meeting. The legislative staff and the Department of Motor Vehicle staff will volunteer their time. This service is of no cost to the public, nor are you aware that such fingerprinting services are ever provided to the public at a cost by public agencies. Equipment of the Department of Motor Vehicles will be utilized to provide the fingerprinting services.

The constituent meeting will be held in the parking lot of a local retail merchant which is used in connection with the merchant's retail business. The parking lot is not leased or rented. There will be no other costs to the retailer in connection with the event.

³ However, for purposes of applying Section 87102.5 only, written advice given to a Member of the Legislature regarding his or her duties under this section by the Legislative Counsel shall have the same effect as advice given by the Commission pursuant to subdivision (b) of Section 83114 if both of the following apply: (A) The member has made the same written request based on the same material facts to the Commission for advice pursuant to Section 83114 as to his or her duties under this section, as the written request and facts presented to the Legislative Counsel; and (B) The commission has not provided written advice pursuant to the member's request prior to the time the member acts in good faith reliance on the advice of the Legislative Counsel. (Section 87102.5(b)(8).)

ANALYSIS

Section 82015 defines "contribution" as any payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. A payment is made for political purposes if it is: (1) 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 (2) received by or made at the behest of a candidate.⁴ (Regulation 18215(a).)

Section 82007 defines "candidate," in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official Senator Peace is considered a candidate under Section 82007. Consequently, any payments he receives are presumed to be for political purposes. (Danner Advice Letter, No. A-96-039.) Thus, payments in connection with this event may result in the receipt of contributions by the legislator.⁵

Regulation 18215(c) provides in pertinent part that the term "contribution" does not include:

* * * *

(2) Volunteer personal services or payments made by a person for his own travel expenses, if such payments are made voluntarily without any understanding or agreement that he or she will be repaid.

(3) A payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant's home or office, if the total cost of the meeting or

⁴ Regulation 18225.7(a) provides that "made at the behest of" means: "made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of." Such arrangement must occur prior to the making of a communication described in Government Code Section 82031.

⁵ Please note that payments may also result in the making of gifts to a public official. (Section 82028.) Under these facts, we have analyzed the payments as contributions. Therefore, it is not necessary to discuss whether a gift would result.

fundraising event is \$500 or less, exclusive of the fair rental value of the premises.

According to the information you have provided, staff of the Department of Motor Vehicles and legislative staff will be volunteering to provide fingerprinting services in connection with the event. Therefore, we would not consider such volunteer personal services to constitute contributions. This would include the use of the fingerprinting equipment, which is a de minimus cost necessary to provide the fingerprinting services. (Regulation 18215(c)(2).)


With respect to the use of the retail merchant's parking lot, we would apply the exclusion in Regulation 18215(c)(3). This is analogous to a payment made by an occupant of an office for costs related to a meeting held in the occupant's office. Provided the retail merchant does not normally charge a fee for the use of the parking lot and does not incur costs of more than \$500 in connection with the event, we conclude this exclusion applies.

Thus, we conclude that the sponsored event would not result in gifts or contributions to Senator Peace.

I trust this letter addresses your questions and immediate concerns regarding events sponsored by State Senators. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.⁶

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
Counsel, Legal Division

⁶ 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.