

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

February 23, 1996

Greg Schmidt
Executive Officer
Senate Rules Committee
California Legislature
State Capitol, Fourth Floor
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-96-056

Dear Mr. Schmidt:

This is in response to your request for advice on behalf of Senator Killea regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Will any of the organizations, agencies, associations, or individuals hosting or participating in the meetings listed below have made a gift or campaign contribution to Senator Killea?

CONCLUSION

No gift or contribution to Senator Killea will result.

FACTS

Public Meeting #1

Senator Lucy Killea has scheduled a series of public meetings with her constituents in several local communities. One of the meetings is with Assemblymembers Alpert and Davis. The public meeting will be held in a senior center established by the county and the city as part of its area agency on aging activities and

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.

holds a nonprofit status. The center frequently makes the room available to others for an unknown cost. Generally, the center's fees are to cover staff who must be in attendance when the center is in use. Because the Senator is the local representative and this is a public meeting of interest to the center's users, the cost has been waived.

A local law enforcement agency representative will make a presentation at the public meeting. The officer will be making the presentation while on duty as part of his or her official crime prevention duties. A local nonprofit citizen's group will make a presentation, performed by a paid staff member, at the public meeting regarding increasing crime rates in residential areas. In addition, a volunteer from another local nonprofit group will also make a presentation concerning crime prevention.

Public Meeting #2

Senator Killea has organized another public meeting and wishes to hold it in a convenient area. A local nonprofit organization has offered to allow the forum to take place in their meeting rooms. The meeting rooms are made available to government offices at no cost; rental costs to private organizations or individuals are unknown.

In addition to the Senator, two community sponsored groups will make presentations at the public meeting. Both groups are nonprofit and the groups' volunteers specialize in crime prevention in residential and commercial areas. A combination of paid staff and volunteers will make presentations at the public meeting.

Public Meeting #3

A city library will be the location for another public meeting. The library's policy is to rent meeting rooms to private organizations or groups. No cost has ever been levied for a government meeting.

Public Meeting #4

The Senator will hold a public meeting focused on the difficulties faced by disabled individuals and their families. A professional association's meeting room has been made available for this meeting. The association's status is a corporate 501(c)(6). The association is waiving its normal fee for use of the room and will provide refreshments (i.e., coffee service) for the attendees. Generally, the costs for the rental and refreshment service to private groups or organizations is in excess of \$175.

A nonprofit 501(c)(3) group dedicated to assisting families with resources and counseling when a family member is disabled will co-host the forum. A number of panelists will make

presentations during the public meeting. One of these is a director of an agency funded by county and city revenues. Other panelists include: a director of a county agency, a registered lobbyist and an Assembly legislative staff member who have expertise in this policy area. Assemblymember Alpert has also been asked to cosponsor this public meeting with Senator Killea.

APPLICABLE LAW

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.² (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 Killea is considered a candidate under Section 82007. Consequently, any payments Senator Killea behests are presumed to be for political purposes and will be considered contributions absent any exception. (Danner Advice Letter, A-96-056.)³

Regulation 18215 provides that a contribution includes "[a]ny goods or services received by or behested by a candidate or

² Regulation 18215 provides: "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 the following or any agent thereof: (A) a candidate; (B) a controlled committee; (C) an official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or (D) an organization formed or existing primarily for political purposes, including, but not limited to, a political action committee established by any membership organization, labor union or corporation.

³ A candidate "behests" a contribution when the contribution is 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."
(Regulation 18225.7(a).)

committee at no charge or at a discount from the fair market value, unless the discount is given in the regular course of business to members of the public."

Regulation 18215 further 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 fundraising event is \$500 or less, exclusive of the fair rental value of the premises.

(4) A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, that meets all of the following:

(i) Does not contain express advocacy;

(ii) Does not make reference to the candidate's candidacy for elective office, the candidate's election campaign, or the candidate's or his or her opponent's qualifications for office; and

(iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate's opponent.

Where a payment is not a contribution, it may in some circumstances be considered a gift. "Gift" is defined in Section 82028 as any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.

The term "gift" does not include material which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties. (Section 82028; Regulation 18942.1.) Of course, the determination of whether a payment is a gift or

contribution is a factual question which must be determined on a case-by-case basis.

ANALYSIS

Public Meeting #1

a. Contributions

According to the information you have provided, Senator Killea has organized the public meeting at the senior center. Thus, any payments made at the behest of Senator Killea will be considered contributions to Senator Killea absent an exception.⁴

The senior center will be making their meeting room available to Senator Killea at no cost. According to your facts, the senior group normally charges a fee for the room and has waived the fee for Senator Killea. As such, the discount is not given to Senator Killea in the regular course of business (Regulation 18215(b)(3).) We would, however, apply the exception in Regulation 18215(c)(3). The use of the room is analogous to a payment made by an occupant of an office for costs related to a meeting held in the occupant's office. The senior center is making their meeting room available in the same sense a private company might make their conference room available for a meeting. Provided the total costs of the meeting do not exceed \$500, exclusive of the fair rental value of the premises, we conclude this exception applies.

Several individuals will make presentations at the meeting, including a local law enforcement agency representative, a local nonprofit citizen's group and another local nonprofit group. You have indicated that some of these individuals will be volunteering their time and some will be providing the presentation in the course of their employment. If the individuals are volunteering their time, we would not consider such volunteer personal services contributions. (Regulation 18215(c)(2).)

Other individuals may be paid by their employer. Regulation 18423 provides an exception from the definition of "contribution" where an individual is paid by his or her employer and the individual spends less than 10percent of his or her compensated time in a calendar month rendering services for political purposes. The exception would include reimbursement for personal expenses, such as travel, paid for by an employer. (Regulation 18423(d).) Based on your facts, the personal services would not be rendered for political purposes, as defined in Regulation 18423(b). For purposes of Regulation 18423, personal services are

⁴ Assemblymembers Alpert and Davis will be attending the event, however, you have not indicated that they will be co-sponsoring the event or doing anything other than attending. Therefore, anything of value received by Assemblymembers Alpert and Davis, such as food and drink at the event, will be considered gifts.

rendered for "political purposes" if they are carried on for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates, or the qualification or passage of any measure. (Regulation 18423(b).)

Some of the presenters will be paid by their public employer, such as the local law enforcement representative. The presentation would be in the normal course of their employment. Regulation 18420 provides that a payment by a government agency of the salary or expenses is a contribution if the salary or expenses are for "campaign activities" and total more than 10percent of the employee's compensated time pursuant to Regulation 18423. (Regulation 18420.) "Campaign activities" are delineated in the regulation and include such items as arranging a campaign event, acting in the capacity of the campaign manager or soliciting, receiving or acknowledging contributions. The regulation was meant to address "the issue of unavoidable de minimus campaign-related activity." (May 24, 1979 staff memorandum to the Commission regarding Regulation 18420.)

As the staff memorandum recognized, individuals working for public agencies are necessarily working in a political environment, but if they are not involved in campaign activity or if any campaign activity does not take up more than 10percent of their time, they are not making contributions. The regulation was intended to exclude from the definition of contribution other activities performed by these employees that may be perceived as political but are not campaign related. As such, the government agencies' services behested by a candidate and provided to an event that is not a "campaign" activity are not considered contributions.

b. Gifts

Because the aforementioned donated personal services are not contributions, they would constitute gifts to the Senator instead. (Section 82028.) However, the presentations would be provided primarily to convey information and to assist the Senator in the performance of her official duties or of her elective office. Therefore, the presentations would be considered "informational material" and not gifts to the Senator. (Regulation 18942.1.) Since no gift to the Senator would result, the travel to the presenters paid for by their employers would, similarly, not constitute gifts.

Public Meeting #2

In your second situation, Senator Killea has organized a public meeting to be held in a local nonprofit organization's meeting room. The meeting rooms are made available to government offices at no cost. Thus, the exception for discounts made available to the general public will apply. (Regulation 18215(b)(3).)

A combination of paid staff of nonprofit organizations will make presentations. Therefore, the same rules discussed above with reference to personal volunteer services provided will apply in this situation.

Public Meeting #3

The city library hosting this meeting normally rents their meeting rooms to private organizations or groups, but no cost has ever been levied for a government meeting. We do not have enough facts to know whether the exception for a discount ordinarily provided to the public exists in this case; it appears that this situation is similar to that of Public Meeting #2 where the free meeting room provided to government organizations qualifies as a discount provided to the general public. (Regulation 18215(b)(3).)

Public Meeting #4

This meeting is co-hosted by Senator Killea and Assemblymember Alpert. Thus, any payments behested by the officials will be considered contributions to both officials on a pro rata basis, absent an exception. The professional association co-hosting Public Meeting #4 has waived its normal fee for the use of the room and will provide refreshments for the attendees. Since the waiver of the room fee provided here is not a discount generally available to the public, the exception in Regulation 18215(b)(3) does not apply. However, if the costs of the event are less than \$500, the exception in 18215(c)(3) will apply as in Public Meeting #1.

Your facts indicate that there are several panelists making presentations. The same discussion with regard to personal services set forth in the discussion of Public Meeting #1 will apply.

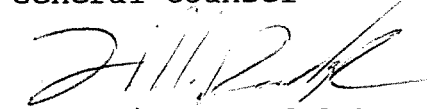
Payments for invitations to an event co-hosted by a private sponsor at the behest of a legislator, regardless of who pays for the invitations, will not be considered contributions if they meet the requirements of Regulation 18215(c)(4). Regulation 18215(c)(4) provides that communications are not contributions if they do not contain express advocacy, do not make reference to the candidate's candidacy for elective office or the candidate's opponent for elective office and do not solicit contributions.

Finally, in a telephone conversation on February 15, 1996, your attorney, Robert Leidigh, asked how the "total costs" in Regulation 18215(c)(3) would be calculated. The total costs will include payments made directly for the event, such as refreshments and entertainment. "Costs" do not include expenses which are neither a gift nor contribution pursuant to a separate statutory or regulatory exception and would thus not be considered in calculating the total costs of the event.

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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