

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

March 14, 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-96-091

Dear Mr. Schmidt:

This is in response to your request for advice on behalf of Senator Solis regarding the "gift" and "contribution" provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

Senator Solis has been asked to narrate an educational video, which will be funded by a federal government agency and a 501(c)(3) nonprofit organization.

1) Will Senator Solis receive a contribution or gift from the federal government agency which funds the video project?

2) Will Senator Solis receive a contribution or gift from the 501(c)(3) nonprofit organization which funds the video project?

### CONCLUSIONS

1) Senator Solis will not receive a contribution or gift from the federal government agency.

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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.

2) Senator Solis will not receive a contribution or gift from the 501(c)(3) nonprofit organization.

#### FACTS

Senator Solis has been asked to narrate a ten minute educational video, which will disseminate information about lead poisoning in urban centers. Her on-screen camera time will be approximately 30 seconds. The video will not make any reference to Senator Solis other than her title as an elected representative. No other elected officials will be included in the video. No campaign activity will be expressed in the video.

A federal government agency is sponsoring a project to disseminate information on the dangers of lead poisoning to the public. The agency's financial involvement for the video production is in excess of \$500. The agency's payments will be made directly to vendors and/or subcontractors. A 501(c)(3) nonprofit organization is also participating in the project by making a payment in excess of \$500. These payments also will be made directly to vendors and/or subcontractors.<sup>2</sup>

#### 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

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<sup>2</sup> During my March 12, 1996, telephone conversation with Mr. Bob Leidigh, Counsel for the Senate Rules Committee, Mr. Leidigh declined to disclose the name of the federal government agency and the 501(c)(3) nonprofit organization.

of a candidate.<sup>3</sup> (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 Solis is considered a candidate under Section 82007. Consequently, any payment Senator Solis behests is presumed to be for a political purpose and will be considered a contribution absent any exception. (Danner Advice Letter, A-96-039.)<sup>4</sup>

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

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(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

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<sup>3</sup> 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.

<sup>4</sup> 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).)

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.

ANALYSIS

You have stated that the video is educational and will not expressly advocate any campaign activity. It will not advocate for the Senator's candidacy or election and will not make reference to her candidacy, other than to her title as an elected representative. The video will not solicit any contributions for her candidacy.


Therefore, the payments for the video production which will be made by the federal government agency and the 501(c)(3) nonprofit organization are payments for a communication that is exempted as a contribution under Regulation 18215(c)(4). Based upon the facts provided, the payments do not constitute a contribution to Senator Solis.

In addition, since the payments are analyzed as contributions which meet an exception under Regulation 18215(c)(4), there is no gift to Senator Solis.

I trust this answers your questions.

Sincerely,

Steven G. Churchwell  
General Counsel

By:  Jill Stecher  
Counsel, Legal Division

SGC:JS:ak