

RAVI MEHTA  
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

March 26, 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-96-098

Dear Mr. Schmidt:

This is in response to your request for advice regarding the campaign and gift limit provisions of the Political Reform Act (the "Act").<sup>1</sup>

QUESTION

Will a private entity, which pays airfare and lodging for witnesses to testify at a legislative hearing, have made a gift or campaign contribution to Senator Polanco who "behested" the payments?

CONCLUSION

The payments will be contributions to Senator Polanco.

FACTS

The Subcommittee on Prison Construction and Operations, currently consisting of Senators Polanco and Boatwright, plan to hold a hearing to address oversight issues. Other Senators may, at the time, choose to attend the hearing. In order to gain the

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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.

expertise and experience from other states, the Subcommittee would like to have two persons from outside of California testify. Senator Polanco would like to ask a private entity, which is not the employer of the expert witnesses, to pay for the airfare and lodging of the expert witnesses.

#### 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.<sup>2</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 elected officials, Senators are considered candidates under Section 82007. Consequently, any payments received by or behested by<sup>3</sup> Senators are presumed to be for political purposes and will be considered contributions absent an exception. (Danner Advice Letter, A-96-039.)

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<sup>2</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>3</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).)

ANALYSIS

According to the information you have provided, two witnesses from out of state plan to testify at the subcommittee hearings. At the behest of Senator Polanco, a private entity, which is not the employer of the expert witnesses, would pay for the airfare and lodging of the expert witnesses.

Any payments behested by Senator Polanco will be considered contributions absent an exception. An exception to the contribution definition exists for payments made to an employee for personal services and reimbursement of related expenses rendered at the behest of a candidate. (Regulation 18423; Schmidt Advice Letter, No. A-96-056.) In addition, there is an exception for payments behested by a candidate and made by a government agency so long as the payments are not made for "campaign activities" as defined by regulation. (Regulation 18420; Schmidt Advice Letter, supra.)

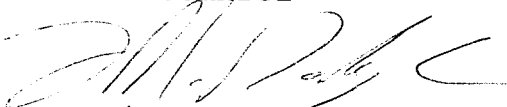
Neither of these exceptions apply in this case. Senator Polanco will behest the travel payments from a third party. The witnesses' expenses will not be paid by either their employer or a government entity. Therefore, the payments will be a contribution to Senator Polanco.

In your facts, you stated that Senator Polanco is the only official who will actually be requesting and coordinating the payments. If that is indeed the case, the contributions will be to Senator Polanco alone. Conversely, if Senator Boatwright also behests the contributions, as defined in Regulation 18225.7(a), the payments would be contributions to both Senators on a pro rata basis. Finally, under your facts, the travel payments would not result in a gift or contribution to any other Senator.

Please keep in mind that the advice in this letter is limited to your specific inquiries regarding the gift and contribution provisions of the Act and does not address such issues as the Act's mass mailing and lobbyist provisions. 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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