

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

April 5, 1996

Christine Gastelum
Honorable Martha M. Escutia
Assemblymember, Fiftieth District
2650 Zoe Avenue, 2nd Floor
Huntington Park, CA 90255

Re: Your Request for Advice
Our File No. A-96-113

Dear Ms. Gastelum:

This is in response to your request for advice on behalf of Assemblymember Martha M. Escutia regarding provisions of the Political Reform Act (the "Act") regulating the receipt of "gifts" and "contributions."¹

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Oglesby (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. If Assemblymember Escutia cosponsors an education conference with the Southeast Community Development Corporation (the "SCDC"), will corporate sponsors or the SCDC have made gifts or contributions to the Assemblymember by making expenditures in connection with the conference?
2. Will public universities and schools that participate in the conference and provide facilities and services be making gifts or contributions to the Assemblymember?

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.

CONCLUSIONS

1. Payments made to the SCDC by corporate sponsors will not be considered gifts or contributions to the Assemblymember, so long as the SCDC is not considered a controlled committee of the Assemblymember pursuant to Regulation 18217. However, the entity that provides the food and refreshments for the event may be making a contribution to the Assemblymember.

2. Public universities and schools that participate in the conference and provide facilities and services in connection with the event would not be making gifts or contributions to the Assemblymember.

FACTS

Assemblymember Escutia would like to cosponsor a conference with the Southeast Community Development Corporation. The SCDC is a nonprofit entity formed pursuant to Internal Revenue Code Section 501(c)(3). The SCDC will seek corporate sponsorship and make expenditures to acquire materials, scholarships, and food. Assemblymember Escutia is an inactive board member of the nonprofit. According to the additional facts provided in our telephone conversation of April 1, 1996, you stated that there were at least 15 members on the governing board and that the Assemblymember has only attended a few of the meetings of the SCDC. For the most part, the Assemblymember has staff members attend who are there to observe in a nonvoting capacity.

The all-day conference is designed to increased the number of students in the 50th district who will continue their education at the college or university level by providing information to students and parents. The conference includes workshops on how to apply to college, financial aid, and motivational techniques concerning college attendance and success. There will also be a college recruitment fair, keynote speakers and food and entertainment for the students and parents that participate. The conference will be held on a campus in the jurisdiction. Various colleges and universities will participate in the conference and will recruit students at the event.

The Assemblymember and her staff will coordinate along with the other sponsors and community leaders the actual agenda of the day of the conference, including setting up the facilities, assisting in planning and outreach to schools and students, and assisting in the pickup and delivery of promotional items and refreshments.

ANALYSIS

A. Payments Received by the SCDC

Section 82016 defines "controlled committee" as follows:

"Controlled committee" means a committee which is controlled directly or indirectly by a candidate or state measure proponent or which acts jointly with a candidate, controlled committee or state measure proponent in connection with the making of expenditures. A candidate or state measure proponent controls a committee if he, his agent or any other committee he controls has a significant influence on the actions or decisions of the committee.

Thus, Section 82016 describes two ways in which the SCDC may become a controlled committee. First, a candidate might exert significant influence on the actions or decisions of the SCDC. Where candidates are voting members of the SCDC's leadership, they are presumed to be controlling candidates since they exercise significant influence on the actions or decisions of the SCDC. (Ferguson Advice Letter, No. A-86-044.) Second, a candidate may act in concert with the SCDC in making campaign expenditures. Under such circumstances, the SCDC would be a controlled committee.

You stated that the Assemblymember is an inactive member of the governing board of the SCDC, thus absent some exception the SCDC would be considered controlled by the Assemblymember. Thus, if the SCDC qualified as a "committee" the SCDC would meet the definition of "controlled committee" in Section 82016. If the SCDC were a controlled committee of the Assemblymember, all payments made to the SCDC would be considered contributions to the Assemblymember.

However, Regulation 18217(c) provides that a nonprofit corporation will not be considered a controlled committee if:

(1) The nonprofit organization is tax-exempt under Section 501 of the Internal Revenue Code, and is not an organization described in Section 527 of the Internal Revenue Code.

(2) The organization does not make contributions to candidates.

(3) The name of the organization does not include the name of the candidate. For purposes of this subdivision (c)(2) the term "name of the candidate" means the candidate's first and last name or some other unambiguous reference to the candidate.

(4) The organization does not spend funds in excess of the amount permitted under Section 501(h) of the Internal Revenue Code to influence or attempt to influence legislative action.

(5) The organization does not spend funds to influence or attempt to influence the qualification or passage of any measure in an amount sufficient to qualify the organization as a committee under Section 82013 of the Government Code.

According to the facts that you provided, the SCDC meets the requirements of this presumption. Thus, payments the SCDC receives from corporate sponsors would not be considered contributions to the Assemblymember.²

Moreover, the mere fact that an elected officer solicits donations for the organization does not mean that those donations are "contributions." (See, Statham Advice Letter, No. I-90-246; In re Nejedly (1975) 2 FPCC Ops 4.) Regulation 18217(e) provides that a person who makes a donation to a nonprofit organization which is tax-exempt under Section 501 of the Internal Revenue Code, and which is not an organization described in Section 527 of the Internal Revenue Code, in reliance upon the organization's tax-exempt status, is not making a contribution unless the person knows or has reason to know that the organization is operated for political purposes.

Regulation 18217(a)(2) provides that for purposes of Regulation 18217, an organization is "operated for political purposes" if either of the following applies:

(1) The organization receives or expends funds 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 the qualification or passage of any measure.

(2) The organization makes contributions to candidates or their controlled committees.

² However, please note, that since Regulation 18217 provides that donations to the SCDC for the event are not considered contributions to the Assemblymember because the SCDC does not otherwise make contributions to candidates, if the SCDC were to make contributions to the Assemblymember, as discussed below, it runs the risk of being treated as a controlled committee of the Assemblymember.

Your facts indicate that the SCDC is not operated for political purposes as contemplated by Regulation 18217.³

B. Expenditures at the Event

Expenditures at the event the Assemblymember cosponsors may be considered gifts or contributions depending on the specific facts surrounding the expenditure.

As we discussed in the Wierbinski Advice Letter, No. A-96-106, generally payments received by a candidate, or made at the behest of a candidate are presumed to be contributions, unless some exception exists. Regulation 18215 defines "contribution" as any payment 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. (Regulation 18215(a).) A payment is made at the "behest" of a candidate if the payment 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" the candidate. (Regulation 18225.7(a).)

Thus, absent some exception, expenditures on the event may be considered contributions from the SCDC, or other cosponsors, to the Assemblymember.

1. Use of the Public School Facilities of One of the Cosponsors

Consistent with our conclusion in the Schmidt Advice Letter, No. A-96-075, so long as the school has a policy of making its facilities available to community groups for these types of events without charge, the exception for discounts made available to the general public will apply and no contribution will result. (Wierbinski Advice Letter, No. A-96-106; Regulation 18215(b)(3).)

³ In the Bell Advice Letter, No. A-94-376, we applied a different analysis to nonprofit entities formed for expenses associated with the gubernatorial inauguration. Gubernatorial inauguration and transition expenses have traditionally been treated uniquely. (See e.g. Grindle Advice Letter, No. A-85-177; Pessner Advice Letter, No. A-83-110.)

2. Public University and School Participants

Public universities and school will also provide personnel to present workshops for the students and participants that attend. With respect to payments made in connection with the presenters at the event, in the Schmidt Advice Letter, No. A-96-056, we advised that if individuals are volunteering their time, we would not consider such volunteer personal services contributions. (Regulation 18215(c)(2).)

We also concluded that even individuals compensated to speak at the event by public agencies such as colleges and universities would not be making contributions to the Assemblymember so long as their involvement was not "campaign" related.⁴ The event you describe is not a campaign event.

Finally, with respect to those presenters, we concluded that since the presentations would be provided primarily to convey information and to assist the officeholder in the performance of her official duties that they were considered "informational material" and not gifts. (Regulation 18942.1.)

3. Program Materials

Payments for communications in connection with the event, such as those program materials distributed at the event itself will not be considered contributions if they meet the requirements of Regulation 18215(c)(4). (Schmidt Advice Letter, No. A-96-056.) 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.

4. Provision of Food and Entertainment for Program Participants

At the Assemblymember's Behest: Where a corporate sponsor provides food and entertainment for the event, and the expenditure will be made under the control or at the direction of the Assemblymember, or in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the Assemblymember or her staff, then the payments would be considered contributions the Assemblymember and must be disclosed.

⁴ "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 noted above, if the SCDC were to make payments for food and entertainment for the event, which would be construed to be a contribution, the exception in Regulation 18217 would not apply. Thus, if the SCDC were to make this contribution, it would run the risk of being treated as a controlled committee of the Assemblymember making all contributions received by the SCDC contributions to the Assemblymember.

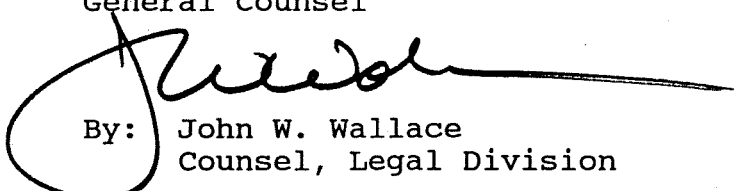
Not at the Assemblymember's Behest: Conversely, as we advised in the Wierbinski Advice Letter, No. A-96-106, where the acquisition of food or other items for the event is not performed under the control or at the direction of the elected official, or in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the official, then the payments would not be considered contributions to the official.

Finally, as noted above, even if the payments for food are not considered contributions, they may still be considered gifts, under some circumstances. Regulation 18941 provides that a gift is "received" or "accepted" when the recipient knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift. If the Assemblymember will not receive or control the food for the event, the food will not be considered a gift to the Assemblymember. However, as we discussed the amount she actually consumes or any amount she might "receive" will be considered a disclosable gift and may not exceed \$280. (Regulation 18941.1.)

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

Sincerely,

Steven G. Churchwell
General Counsel



By: John W. Wallace
Counsel, Legal Division