



RAVI MEHTA
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

May 17, 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-96-152

Dear Mr. Schmidt:

This is in response to your request for advice on behalf of Senator Monteith 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.)

QUESTION

Will payments received in connection with the Annual Senior Conference sponsored by the Area Agency on Aging Office (the "agency") and Senator Monteith be considered reportable gifts or contributions to the Senator?

CONCLUSION

The payments described in your letter will not be considered gifts or contributions.

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.

FACTS

Annually, the Area Agency on Aging Office in Senator Monteith's district sponsors a senior conference with other nonprofit entities. The conference consists of speakers and panels and a variety of display tables and counseling booths, all of which are geared toward providing useful information to older Americans. The panelists will include a deputy Attorney General, county and private hospital representatives, nonprofit agency representatives, and a home health care provider. The panelists will be acting in their official capacity and not as volunteers.

In addition, the agency will provide paid staff and volunteers for the Conference, send out mailers advertising the Conference (at an estimated cost of \$600), and reserve the county fairgrounds for the conference (at an estimated cost of \$350).

This year, Senator Monteith has agreed to participate in the Conference and act as a cosponsor. He will attend and provide opening remarks. His staff will work with the agency in making arrangements for the Conference. Food (\$750 worth) will be obtained without any involvement of the Senator or his staff and will be sold to participants.

DISCUSSION

I. Gifts and Contributions

A. Applicable Law

Generally, a payment received by an officeholder, or made at the behest of an officeholder, is considered a gift or contribution unless the officeholder provides consideration of equal or greater value in exchange for the payment.

For example, a payment received by a candidate is presumed to be a contribution, 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).)

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 the candidate or the candidate's committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. As an elected official, the Senator is considered a candidate under Section 82007. Thus, any payments received by a legislator, or made at that legislator's behest is presumed to be for political purposes and will be considered contributions absent an exception. (Danner Advice Letter, No. A-96-039.)

The Act does not prohibit or limit an officeholder's receipt of contributions in connection with governmental events. Contributions must merely be disclosed on the officeholder's periodic reports.

Conversely, Regulation 18215(c)(14) expressly provides that "a payment received by, directed by, or made at the behest of a candidate for personal purposes" is not a contribution. However, such payments may be considered gifts. Gifts are subject to a \$280 per single source limit per calendar year. Gifts must also be disclosed.²

B. Panelists and Agency Volunteers and Staff

With respect to payments made in connection with the speakers at the Conference, 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 in that letter that even individuals compensated to speak at the event would not be making contributions so long as their involvement was not "campaign" related. Moreover, where the presentations would be provided primarily to convey information and to assist the officeholder in the performance of his official duties, the panelists' participation would be considered "informational material" and not gifts. (Regulation 18942.1.)

These same conclusions would apply to your Conference. Thus, the Senator incurs no reporting obligations with respect to the payments in connection with speakers.

² For example, you stated that the food (\$750 worth) will be obtained for the conference without any involvement of the Senator or his staff and will be sold to participants. If this is the case, (and assuming the Senator pays for his own food), the costs connected to the food will neither be a contribution or a gift to the Senator.

C. Mailings

In the Schmidt Advice Letter, No. A-96-056, Schmidt Advice Letter, No. A-96-072, Schmidt Advice Letter, No. A-96-074, Schmidt Advice Letter, No. A-96-075, Schmidt Advice Letter, No. A-96-091, Schmidt Advice Letter, No. A-96-096, Napolitano Advice Letter, No. A-96-112, and Gastelum Advice Letter, No. A-96-113, we advised that payments for communications in connection with the event, such as those program materials distributed at the event itself and mailers or other communications advertising the event 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. This same test would apply under your facts.

D. Use of the Fairgrounds

You stated that the agency will reserve the county fairgrounds for the conference (at an estimated cost of \$350). As noted above, Regulation 18420 was adopted to draw lines between permitted governmental activity and reportable political activities of officeholders. The regulation was proposed in response to Fair Political Practices Commission v. Tom Suitt, et al. (1979) 90 Cal.App.3d 125 which concerned an employee of the Assembly, who during his regular work-time, performed campaign work for Assemblymember Tom Suitt's campaign (including soliciting campaign contributions, engaging in campaign strategy and planning, coordination of the activities of campaign volunteers, and the preparation of a campaign budget for the Assemblymember). The court agreed with the Commission, that payments in connection with such activities would be reportable contributions.

Regulation 18420(b) provides:

The payment by a state or local government agency of the salary or expenses of its employees or agents is an expenditure or contribution only if the salary or expenses are for campaign activities and meet the requirements of 2 Cal. Adm. Code Section 18423. For purposes of this subsection, "campaign activities" shall include, but are not limited to, the following:

- (1) Arranging or coordinating a campaign-related event;
- (2) Acting in the capacity of the campaign manager or coordinator;

(3) Soliciting, receiving or acknowledging campaign contributions or arranging for the raising of contributions;

(4) Developing, writing or distributing campaign literature or making arrangements for campaign literature;

(5) Arranging for the development, production or distribution of campaign literature;

(6) Preparing television, radio or newspaper campaign advertisements;

(7) Arranging for the development, production, publishing or broadcast of campaign advertisements;

(8) Establishing liaison with or coordinating activities of campaign volunteers;

(9) Preparing campaign budgets;

(10) Preparing campaign statements; and

(11) Participating in partisan get out the vote drives.

While the payment by the agency for the fairgrounds rental is not salary, it is the payment of an expense associated with the public employees' participation in the conference. Thus, we believe the same standard set forth in Regulation 18420 would apply to the agency's payment for the fairgrounds. Since the event is not a campaign event as set forth in Regulation 18420, payments by state or local government agencies of the salary of its employees or agents and associated expenses would not be considered a contribution.

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