

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

June 11, 1996

Mr. 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-96-171

Dear Mr. Schmidt:

This is in response to your request for advice regarding the "gift" and "contribution" provisions of the Political Reform Act (the "Act").¹

QUESTION

Will the receipt of payments or expenditures to vendors for overhead, publicity, and other items, in connection with a community health care meeting, result in a campaign contribution or gift to Senator Solis?

CONCLUSION

The payments and expenditures will not be considered campaign contributions or gifts to Senator Solis, as discussed below.

FACTS

Senator Solis in cooperation with four nonprofit 501(c)(3) organizations will hold a community meeting focused on family health care issues. One of the four nonprofit organizations will solicit funds to pay for various items needed to accommodate a large turnout. These items will include: rental tables, tents, sound equipment, program printing, banners, etc. The solicitation

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.

of funds will be done in accordance with Regulation 18217. Expenditures for these items will be in excess of \$500. Payments will be made directly to the vendors.

The community meeting will be held in a local government community center which is made available to the public at no charge. The nonprofit organizations are arranging with a vendor to provide food service during the community meeting. Participants will be able to purchase food during the community meeting. At the request of the nonprofit organizations and not Senator Solis, a water supplier and portable toilet company will provide bottled water and toilet facilities for the event at no charge. The value of the bottled water and rental of toilet facilities will be in excess of \$500.

As part of the advance advertising for this public event, the nonprofit organizations plan to list Senator Solis as a cosponsor. Any advertising (on fliers, T-shirts, press releases, banners and programs) will not make any reference to Senator Solis' candidacy for any office. Senator Solis' photograph will be incorporated into the press releases and programs.

DISCUSSION

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 behest² of a candidate. (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 the candidate or his committee has filed a statement of termination pursuant to Section 84214 and Regulation 18404. As an elected official, the Senator is

² 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).)

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.)

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

1. Location. You state that the community meeting will be held in a local government community center which is made available to the public at no charge. You correctly conclude that the local government will not have made a campaign contribution or gift to Senator Solis by making the center available. Under Regulation 18215(b)(3), the exception for discounts made available to the general public will apply.

2. Overhead Expenses.

a. Payments Solicited by Nonprofit Organization. You state that one of the nonprofit organizations will solicit funds to pay for various overhead expenses such as rental tables, tents, sound equipment, and banners. Payments for these items will be made by the nonprofit organization directly to the vendors. You state that the nonprofit organization's solicitation of funds will be done in accordance with Regulation 18217 (copy enclosed). This regulation describes under what circumstances nonprofit organizations will be considered controlled committees of candidates. If the nonprofit was a controlled committee of the Senator, all payments made to the nonprofit would be considered contributions to her.

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 a nonprofit organization may become a controlled committee. First, a

candidate might exert significant influence on the actions or decisions of the nonprofit. Second, a candidate may act in concert with the nonprofit in making campaign expenditures.

Regulation 18217(a) provides that a nonprofit organization will be considered a controlled committee if both of the following apply:

(1) A candidate, his or her agent, or any committee he or she controls, exercises significant influence over the actions and decisions of the organization, or acts jointly with the organization in connection with the making of expenditures.

(2) The organization qualifies as a committee under Government Code Section 82013(a), and the organization is operated for political purposes. For purposes of this regulation, an organization is "operated for political purposes" if either of the following applies:

(A) 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.

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

* * *

If the Senator does not exert significant influence over the nonprofit, as defined in Regulation 18217(b), and the nonprofit is not organized for political purposes, as defined in Regulation 18217(c), payments which the nonprofit receives from corporate or individual donors would not be considered contributions to the Senator. (Gastelum Advice Letter, No. A-96-113.) In this case, there are no facts indicating that the Senator is involved in the nonprofit's governance or that the nonprofit is operated for political purposes.

b. Donations by Companies. You also state that, at the request of the nonprofit organizations, a water supplier will provide bottled water and a portable toilet company will provide facilities for the event, at no charge. If the donations of these items were "at the behest" of the Senator, then they might be considered contributions. However, you state that the companies are donating these items at the request of the nonprofit organizations, and not Senator Solis. We have advised in the past, that where a cosponsor handles the specifics concerning certain portions of an event, such as the acquisition of food or other aspects, and this 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. (Schmidt Advice Letter, No. A-96-096 and Wierbinski Advice Letter, No. A-96-106.)

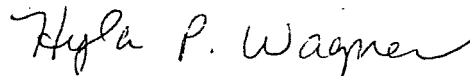
3. Food Available for Purchase. You state that the nonprofit organizations are arranging with a food service vendor to provide food which attendees may purchase during the community meeting. Assuming the vendor is selling the food to participants at the usual and customary prices, the vendor will not be making any contribution or gift to the Senator. First, under your facts, it appears that the food service will be arranged by the nonprofit organizations, rather than at the direction or control of, or in cooperation with the Senator. Second, even if the Senator had coordinated the food service, the fact that the food is not being provided free or at a discount, but is merely available for attendees to purchase, means that no gift or contribution to the Senator will result. The Act's definitions of "contribution" and "gift" both exclude payments for which adequate consideration is received. (Sections 82015 and 82028.) In this situation the vendor will be receiving full and adequate consideration for the food sold to people who attend the family health care event.

4. Publicity. You state that the nonprofit organizations plan to list Senator Solis as a cosponsor on advance publicity for this event including fliers, T-shirts, press releases, banners and programs. These items will not be considered campaign contributions assuming 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.

I trust this answers your question. If you have any further questions regarding this matter, please contact me at 916/322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Hyla P. Wagner
Counsel, Legal Division