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FAIR POLITICAL PRACTICES COMMISSION

March 12, 1997

Tracey Buck-Walsh
State of California
Department of Justice
1300 I Street, Suite 125
Post Office Box 944255
Sacramento, California 94244-2550

**Re: Your Request for Advice
Our File No. A-97-064**

Dear Ms. Buck-Walsh:

This letter is a response to your request for advice on behalf of Attorney General Dan Lungren regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Are payments for travel, lodging, and subsistence to the Attorney General in connection with various speeches, panels, and seminars given on a cruise ship and in Juneau, Alaska, by the official and paid for by *National Review* subject to reporting and gift limits?

CONCLUSION

The Attorney General's receipt of any benefits during the duration of the event that are more than nominal payments for meals and beverages are reportable and subject to gift limits if they are made on days where the official does not give a speech or participate in a panel or seminar. In addition, payments for any travel that is outside the United States are reportable and subject to gift limits. Payments of air travel to Seward, Alaska, and travel on the cruise ship itself that is within the United States are reportable, but not subject to the gift limits. Payments of meals and beverages on the day of any speech, panel, or seminar and necessary lodging and subsistence on the cruise ship and in Juneau, Alaska, are not reportable nor subject to the gift limits.

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

FACTS

The Attorney General has been invited by the *National Review* to participate in several speeches, seminars, and panels, and to tape a nationally broadcast television show, *Firing Line*. *National Review* is a magazine with an international subscription base devoted to public policy and political issues. The Attorney General would address 400 to 500 of its subscribers concerning various vital issues of public policy and to specifically address how current legislation and court cases are affecting culture and social issues.

The *National Review* is hosting this series of speeches, seminars, and panels on the cruise ship, Ryndam, from August 10 through August 17, 1997. It will stop at various ports in Alaska and in British Columbia. The television taping will be in Juneau, Alaska, on August 14, 1997.

The specific schedule is as follows:

- August 10 Air travel to Seward, Alaska, from Sacramento, California.
- August 11 At sea, the Attorney General will be a keynote speaker at a formal sit-down event where it is expected he will address various major state and national policy issues to 400-500 attendees.
- August 12 At sea, the Attorney General will be a featured panel participant where he will be expected to address a specific subject relating to a state or national policy issue and be prepared to respond to questions from the participants, the same 400-500 attendees.
- August 13 Stop in Sitka, Alaska.
- August 14 Stop in Juneau, Alaska (which is accessible only by water or air). The Attorney General is to tape a *Firing Line* television show at a PBS affiliate in Juneau. The *Firing Line* episode will be broadcast to a national audience.
- August 15 Stop in Ketchikan, Alaska. No events scheduled.
- August 16 At sea, the Attorney General will be a featured seminar participant where he will be expected to address a specific subject relating to a state or policy issue and prepared to respond to questions from the participants, the same 400-500 attendees.
- August 17 Arrive in Vancouver, British Columbia, and return by air to Sacramento, California.

Other participants at the panels and seminars and the *Firing Line* broadcast will be former United State District Court Judge Robert Bork, economist Milton Friedman, editor-at-large of the *National Review* William F. Buckley, Jr., syndicated columnist and national political commentator Robert Novak, Washington editor of the *National Review* Kate O'Beirne, editor John O'Sullivan, editor and syndicated columnist Richard Brookhiser, and others.

For the duration of the cruise, the ship will travel in United States waters for 104 hours, spend 20 hours traveling through international waters and 32 hours traveling through Canadian waters in order to reach its debarkation port of Vancouver, British Columbia.

The *National Review*, a for profit entity, will pay for the air transportation, meals, and the lodging expenses on the cruise ship. No payment will be made for giving the speeches.

APPLICABLE LAW

The Act requires that elected state officers report income and gifts on their statements of economic interests (Sections 87200, 87202-87205, and 87207), prohibits the receipt of honoraria (Section 89502) and limits gifts to \$290 per calendar year from a single source. (Section 89503.)

"Gift" is defined as "any payment to the extent that consideration of equal or greater value is not received" (Section 82028.) Therefore, absent an exception, the value of a free boat cruise provided to a public official is considered a reportable gift to the official. (Section 82028; *Johnck* Advice Letter, No. A-95-237.) In addition, payments² of travel to a public official may also be subject to reporting and gift limits. This would include payments by a third party for a public official's transportation, lodging, and subsistence³ in connection with delivering a speech or participating in a panel or seminar. (Section 89506.) However, under some circumstances, payments for transportation, lodging, and subsistence may be exempt from the definition of "gift."

Necessary Lodging and Subsistence: For example, regulation 18950.3 exempts some payments from the definition of "gift" for all purposes. The exception applies to free admission, refreshments, and similar non-cash nominal benefits provided during the entire event at which a public official gives a speech, participates in a panel or seminar, provides a similar service, and, any necessary lodging and subsistence provided directly in connection with the event. (Regulation 18950.3.)

² A "payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible. (Section 82044.) Unless an exception applies, any payment to a public official is reportable and subject to limits.

³ Unless an exception applies, a payment for food to a public official is a reportable gift. (Regulation 18941.1.)

What constitutes "necessary accommodations" within this exception is generally limited to the day of the speech, and possibly the day before and after if necessary due to travel time. Any accommodations outside these parameters would be a gift. (See, e.g., *Nishite* Advice Letter, No. A-91-568.) Thus, we have advised that under this regulation, the exclusion for meals and beverages is limited to the day of the speech only, for travel to Maui, Hawaii, whereas lodging would include the day of the speech, and the day immediately before and after the speech. (*Dominguez* Advice Letter, No. A-95-032.)

Travel: Actual intrastate transportation in connection with a speech is neither reportable nor subject to gift limits. (Regulation 18950.3.) However, transportation to events outside California are fully disclosable and could be subject to the gift limits of the Act absent an exception.

Section 89506 provides an exception from the gift limits for certain payments for transportation.

"(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

- (1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.
- (2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Gifts of travel not described in subdivision (a) are subject to the limits in Section 89503."

As stated above, payments contemplated under section 89506 must be reasonably related to legislative or governmental purposes, or to an issue of state, national, or international public policy. Section 89506(a)(1) exempts *travel within the United States* provided to an official in

connection with a speech given by the officer from the gift limits of the Act. Thus, for example, we advised that the exception applied to travel to Florida in connection with a speech given at a conference held there. However, with respect to travel to a conference held in Vancouver, British Columbia, the exception did not apply. The travel and the event were outside the United States. (*Allen* Advice Letter, No. I-94-270.) Therefore, generally, we have interpreted section 89506 to require that both the travel be within the United States and the speech be delivered within the United States. (*Hoehn* Advice Letter, No. I-92-392.)

Travel outside the United States is reportable and subject to the limits unless the travel is provided by a government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under section 501(c)(3) of the Internal Revenue Code. (Section 89506(a)(2).)

Speech Given: Pursuant to regulation 18931.1, "speech given" means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. We have advised that an appearance on the Ricki Lake Show to participate in a panel discussion broadcast on television qualifies as a "speech given" by a public official. (*Manson* Advice Letter, No. A-94-308.) However, merely being a "discussant" at a conference does not qualify as giving a speech or oral presentation as required by the regulation. (*Hoehn* Advice Letter, *supra*.) Similarly, holding informal meetings with constituents or a few individuals who are members of a particular group would not qualify. (*Williams* Advice Letter, No. I-95-405.)

Where the issue has been raised with respect to travel payments in connection with a speech or a series of speeches, we have generally analyzed whether the exception to travel applies in connection with an entire event. (*Martinez* Advice Letter, *supra* (two-day conference); *Allen* Advice Letter, No. A-96-181 (conference); *Cochran* Advice Letter, No. A-96-015 (two-day workshop); *Allen* Advice Letter, No. A-95-188 (conference, annual board meeting and general meeting); *Bogetich* Advice Letter, No. I-95-180 (three-day visit to Silicon Valley); and *Allen* Advice Letter, *supra* (conference).)

However, in the *Attwater* Advice Letter, A-95-168, the question pertained to travel in connection with a two-year program which included 14 seminars within California, a one-week seminar in a region of the United States, a one-week seminar in Washington D.C., and a three-week seminar internationally. We advised that any national or international travel, including lodging and meals, would be considered a gift unless an exemption applied under section 89506 with respect to separate speeches.

ANALYSIS

Meals and Necessary Lodging: As noted above, generally, a payment for food to a public official is a reportable gift. (Regulation 18941.1.) However, meals provided on any day where the Attorney General gives a speech, participates in a panel or seminar, or provides a similar service are allowable and not reportable. (Regulation 18950.3.) Under the facts you have provided, it appears that the Attorney General will be participating in various speeches, panels, and seminars to 400-500 subscribers of the *National Review* at formal events where the Attorney General will be a featured speaker, providing a substantive presentation relating to issues of state and national importance, and will be responding to questions from the attendees. The nationally broadcast television program on the *Firing Line* also qualifies as a speech. (*Manson Advice Letter, supra.*) Therefore, any payments for meals and beverages on the day of any speech, panel, or seminar are not reportable nor subject to gift limits. However, on August 13, 15, and 17, where no speech is scheduled, meals and beverages would be reportable gifts subject to the gift limits.

Necessary lodging, under these facts, would appear to qualify as gifts not reportable nor subject to the limits. Under your facts, there will be one day before and one day after each of the speeches, panels, or seminars. The travel arrangements are such that it would be impracticable, if not impossible to make other arrangements. Therefore, the lodging would not be reportable nor subject to limits pursuant to regulation 18950.3.

The exemption discussed above also contemplates the receipt of other "non-cash nominal benefits." This exception was included to permit officials to receive noncash items such as coffee mugs or T-shirts at events. (Staff Memorandum, Final Discussion of Travel and Related Regulations — Adoption of Regulations 18950, 18950.1, 18950.2, 18950.3, 18950.4 (Former 18228); Repeal of Regulations 18623, 18728, dated March 28, 1992.) Therefore, to the extent that the Attorney General receives gifts by way of benefits provided on the cruise ship that are more than nominal, these payments would be considered gifts, and subject to the \$290 annual gift limit. For instance, the payment of any tours at debarkation points or other events would also be reportable and subject to the gift limits.

Travel: In your facts, you ask whether payments for travel, i.e., sailing on the cruise ship, are subject to limitations. In addition, you ask about travel that includes air transportation from Sacramento to Seward, Alaska, transportation from the port to the airport in Vancouver, British Columbia, and air travel to Sacramento from Vancouver, British Columbia.

You present a unique factual situation. The travel on the cruise ship itself may be analyzed as a boat tour, which is a gift. (Section 82044; *Johnchk Advice Letter, supra.*) Alternatively, it may be analyzed as travel, much like a conference where one event is scheduled at a number of locations and it is necessary to travel from one location to the other. Under these

facts, we believe it is appropriate to analyze sailing on the cruise ship between speeches as travel.⁴

Travel outside the United States provided by the *National Review*, a for-profit organization, is subject to the \$290 gift limit. For purposes of applying an exception from the gift limits, we view the location of the travel to be within the United States only if no travel is done outside of the United States. We view the travel to be similar to air travel crossing international lines only to the extent that a particular destination point from another location is within the United States. Here there are various destination points: 1) Seward, Alaska, 2) Sitka, Alaska, 3) Juneau, Alaska, 4) Ketchikan, Alaska, and 5) Vancouver, British Columbia. We also believe it is appropriate to evaluate the travel payments in relation to each speech, panel, or seminar.

For purposes of section 89506, travel payments that are within the United States are permissible, because they are for a legislative or governmental purpose, or for an issue of state or national policy. The first speech, the panel, and the seminar appear to qualify as given within the United States. Therefore, the cost of the cruise for the travel within the United States (through Ketchikan, Alaska) is not subject to the gift limits but is reportable.⁵

We note that the last seminar is at sea on August 16, 1997, and that the debarkation point is Vancouver, British Columbia. You indicate that there will be 32 hours of travel through Canadian waters to reach Vancouver. Therefore, it appears that the seminar on August 16, 1997, will be given in Canadian waters and the destination point is in Canada. Since the *National Review* does not qualify under section 89506(b)(2) as a source which does not subject the public official to the gift limits, this portion of the travel on the cruise is reportable and subject to gift limits.

With respect to the other transportation, the air transportation to Seward, Alaska, the transportation from the port to the airport in Vancouver, British Columbia, and the air transportation from Vancouver, British Columbia, may also be analyzed separately. The air travel to Seward, Alaska, falls within the purview of section 89506(b)(1) since the direct

⁴ Please note that under either analysis, the public official is receiving a payment within the meaning of section 82044. However, an exception to the gift limit may apply only if we analyze the payment as travel pursuant to section 89506.

⁵ Regulation 18946 provides that gifts shall be valued at fair market value. Whenever the fair market value cannot readily be ascertained because the gift is unique or unusual, the value shall be the cost to the donor, if known or ascertainable. If the cost to the donor is unknown and unascertainable, the recipient shall make a reasonable approximation. The recipient shall take into account the price of similar items. If similar items are not available as a guide, a good faith estimate shall be utilized. (Regulation 18946.)

destination point is within the United States. Therefore, the payment for the air transportation is a gift subject to reporting, but not subject to limits. However, the travel from the port to Vancouver, British Columbia, and air transportation from British Columbia to Sacramento is clearly not within the United States. Therefore, those payments are reportable and subject to the gift limits.

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in cursive script that reads "Luisa Menchaca".

By: Luisa Menchaca
Senior Staff Counsel, Legal Division

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