

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

March 26, 1997

The Honorable Grace F. Napolitano, Chair
Assembly Committee on International Trade and Development
State Capitol
Post Office Box 942849
Sacramento, California 94249-0001

**Re: Your Request for Advice
Our File No. A-97-112**

Dear Assembly Member Napolitano:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹

QUESTION

Are payments made by third parties in support of three trade conferences either gifts or contributions to you?

CONCLUSION

No. The donations made by third parties would not be considered campaign contributions or gifts to you. Things of value, such as food or lodging, given directly to you or your staff members required to report such items, may be considered gifts.

FACTS

A large number of your constituents and a host of private sector organizations, trade officials from other nations in the Americas, U.S. and state trade officials, and business representatives have requested that you cosponsor two international trade conferences and a "floating trade mission" to Latin America. The purposes of the trade conferences are as follows: (1) Match potential exporters and importers from the Greater Los Angeles area and the Greater Sacramento area who lack the knowledge and required expertise to establish and expand a

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

trading relationship with foreign buyers and sellers, with the proprietors of businesses and trade officials from nations around the world, including the Pacific Rim, North, Central and South America who are interested in purchasing and selling goods and services from businesses in this area; (2) Establish trade alliances through the adoption of "power in regional partnership agreements," and convey information on rules governing trade, export financing, cultural sensitivity, export pricing, and agricultural/food export to participants in the conference; (3) Establish a foundation for new trade relationships which will stimulate the economy of the Greater Los Angeles area and the Greater Sacramento area by opening new international markets for businesses which previously have not participated in trade in the Americas and Pacific Rim.

A steering committee of these constituencies has been meeting on a regular basis and has made numerous suggestions about how these three events should be conducted. In order to understand what would be considered an exception and what would be considered a gift or contribution, you have detailed the list of suggestions made by the steering committee so that we may address each item and determine whether it would constitute a gift or contribution to you under the Act.

You plan to prepare an Assembly resolution authorizing the Assembly Rules Committee to accept the gifts and donations of in-kind services and other items necessary to conduct these events. What follows are specific details of each event.

The Southern California Trade Conference

The steering committee has suggested that you conduct a three to four day trade conference and trade show to be held at a local convention center or other large meeting facility. One member of the steering committee has offered to donate the costs of such a facility, provided that his for-profit company can then retain a portion of it equivalent to approximately 50 booths, which he would then use to sell space to companies in China and California to display their wares.

You would like to offer the event at cost to anyone from the public who would like to attend, including representatives from small and medium-sized companies, students, importers, exporters, shippers, etc.

You would like to allow various state, federal, local agencies, and the private sector to cosponsor the event. Specifically, you would like to advertise it as being cosponsored by local colleges, a federal agency (such as the U.S. Agency for International Development), private sector corporations, local chambers of commerce, utility companies, and others. These organizations would provide varying degrees of support for the event. Some would merely assist in outreach so that you would have a large number of participants attend the event. Others would provide staff time to attend planning meetings (steering committee meetings), assist with set-up, make phone calls, locate companies outside the U.S. who are interested in importing and/or exporting goods and services, organizing reduced hotel rates, coordinating food, etc.

The event would allow small and medium-sized businesses to have the opportunity to participate in educational break-out sessions during which state, federal, local agencies, and private sector companies can provide information about aspects of international trade (such as the ABCs of exporting, freight forwarding, etc.). You would have one or more "keynote" speakers (from the public or private sectors) to provide information to the group as a whole about international trade (such as Big Emerging Markets, (California's Role as an Export Intensive State, etc.).)

You would like to offer every conferee free handouts and information about international trade (such as books or other written materials generated by state, federal, local agencies, or private sector companies related to international trade. One example is the International Resources Guide published by the State Trade and Commerce Agency and the California Chamber of Commerce).

Two private sector entities have offered to coordinate food for the event. They would organize local restaurants and others to provide coffee, tea, water, soda, and other drinks (along with all supplies such as cups, spoons, etc.) at cost. They have also offered to coordinate a continental breakfast and lunch to be offered at cost to all conferees. Two private sector firms have offered to pay for the printing of the fliers advertising the event and the cost of postage to mail them.

As a service to your small and medium-sized companies, you would like to assemble a book of company profiles to be sent to all of the countries of the Americas and Pacific Rim. These profiles would be gathered from the local businesses, typeset, compiled into a book, printed, and distributed to conferees and other countries.

The steering committee has suggested that you negotiate a reduced rate at a local hotel for conferees. Two steering committee members have offered to provide computerized pre- and on-site registration. The steering committee has suggested that you hold three teleconferences prior to the trade conference in order to provide essential information for successful trading between the U.S. and specific foreign countries. These teleconferences are also designed to stimulate interest in international trade in general and the conference in particular.

The first of these teleconferences would be conducted at a local university and broadcast to Mexico. Participants would include small and medium-sized companies from the two countries who would discuss importing and exporting trade areas such as medical, biotechnology, food and agriculture, etc. These teleconferences would be taped and rebroadcast on cable public access channels, down-linked to community colleges and other universities, and made available at public libraries. The air time would be donated to you, as well as the costs of the facility.

A local non-profit (501(c)(3) corporation) annually hosts a "reverse trade mission" to California by a selected industry group from other countries. These international guests would be primarily interested in purchasing California goods and services. The non-profit has offered to host the trade delegation at the event -- providing food, lodging, and entertainment to the foreign guests. The non-profit would be doing this work as part of its normal mission.

Other steering committee members have offered to arrange for a "cultural exchange" in which museum antiquities from various countries would be on display at the trade show for the viewing public. Further, the steering committee would like to allow local businesses to have booths so that they may showcase their products or services to the foreign buyers. One member of the steering committee has offered to provide the necessary materials (such as wood, pipe, and drape, etc.).

The steering committee would like to have signs posted directing the public to the various functions within the event, including parking and break-out sessions. The cities have offered to pay for the costs of these.

The Northern California Trade Conference

The Northern California trade conference will be similar to the above event, although much smaller in scale. It will take place on May 6, 1997.

You would like to conduct it at the Sacramento Convention Center at the same time as "Biz Tech," a local business to business trade show conducted by a for-profit company, is being conducted to maximize the number of companies who will be in attendance. The owner of Biz Tech has offered to work on the steering committee.

Although Biz Tech is being held at the same location, you have decided to rent a separate part of the convention center. Several different companies have offered to donate the costs of the facility to the Assembly Rules Committee.

The steering committee has requested that you conduct "post-conference" teleconferences similar to the ones being done for Southern California. One utility has offered to donate all costs to the Assembly Rules Committee.

We would like to advertise this event on local television and cable stations. One company has offered to donate the costs of the commercial advertisements.

The Floating Trade Mission

The California State University ("CSU") Maritime Academy conducts annual training missions as part of its "floating university" program. This year, the trip will be to five nations of Latin America. They have requested that you cosponsor the event with them and the CSU Foundation, a non-profit corporation. Next year, they will be traveling to the Pacific Rim, and have also asked you to cosponsor that event as well. This year your involvement is minimal. You have agreed to help advertise the event to obtain additional humanitarian aid and to solicit the participation of various companies and agencies for the trade display portion of the event. Specifically, you hope to encourage awareness of the needs of Latin American trading partners in terms of humanitarian aid and to increase the ability to expand trade relations in that part of the world.

Humanitarian aid of medical supplies and equipment and pharmaceuticals is to be delivered by the CSU Foundation to non-profit organizations in Acapulco, Mexico and Lima, Peru. Displays of small and medium-sized companies, the Trade and Commerce agency, and others along with some handouts about each agency and small and medium-sized company that participates will be on board the ship.

The CSU Foundation offers receptions in each port at which they dock, including in California and abroad as part of its normal activities. You have not requested or behested this event. The university will also be attempting to create a student exchange program on a university-to-university basis.

The coordinators of the event have requested that you invite various members of the Legislature to a "send-off" reception prior to the event. This is one of the events the CSU Foundation conducts every time a training mission leaves the port and when it returns. They would like the Legislators to meet with the alumni and others and to have some of them speak at the two events (send off and return reception).

Members of the Legislature have been invited to join the training mission in Acapulco, Mexico for the presentation of the humanitarian aid. You would be required to pay for your own travel, either out of legislative or your own personal funds, however, the Mexican government or the CSU Foundation may provide you with lodging and meals for one to two days.

APPLICABLE LAW

Prior to the passage of Proposition 208 on November 5, 1996, payments received or behested by an elected official were considered campaign contributions, unless some exception applied. 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. (Regulation 18215(a).)²

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, legislators and members of the Administration who are elected officials, such as the Governor, are considered candidates under section 82007 and any payments they behest are presumed to be for political purposes and could be considered contributions. (*Danner* Advice Letter, A-96-056.) Members of the State Senate or Assembly and statewide officials are prohibited from soliciting contributions until twelve or six months before the next primary election. (Section 85305.)

Generally, no contribution or gift results where an official's own agency makes an expenditure on behalf of the public official. For purposes of the cosponsored rules, we have advised that no gift or contribution results where the Senate and Assembly cosponsor events. (*Schmidt* Advice Letter, No. A-96-096.)

We have also advised that when a cosponsor, such as a nonprofit entity, handles the specific arrangements concerning an event (e.g., the acquisition of food) and this is not performed 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-96-171; *Schmidt* Advice Letter, No. A-96-096; and *Wierbinski* Advice Letter, No. A-96-106.)

However, where an assemblymember arranged for door prizes for conference attendees, we advised that the costs of such items would be considered contributions to her under the Act. (*Richardson* Advice Letter, No. A-96-159.) Where refreshments included a closing dinner, served at a meeting and made available to attendees, participants and staff, we advised that non-Senate entities that paid for the cost of refreshments at the behest of the sponsoring Senators would be making contributions to each Senator, on a pro-rata basis. (*Schmidt* Advice Letter, No. A-96-072.) Finally, we have advised that where a public official's staff is involved in coordinating the payments, payments for food for attendees will be considered contributions to the official. (*Napolitano* Advice Letter, No. A-96-112.)

Where payments are not contributions, the payments may be considered gifts under some circumstances. (Section 82028.) 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. Therefore, we have advised that if an

² 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).)

assemblymember does not receive or control food provided at an event, the food will not be considered a gift to the member. (*Wierbinski* Advice Letter, *supra*.)

When the voters enacted Proposition 208, the initiative established the option of noncampaign officeholder accounts. Section 85313 provides that an officeholder may accept contributions “for expenses related to assisting, serving, or communicating with constituents, or with carrying out the official duties of the elected officer, provided aggregate contributions to such a fund do not exceed ten thousand dollars (\$10,000) within any calendar year and that the expenditures are not made in connection with any campaign for elective office or ballot measure.”

In interpreting section 85313, we recently advised in the *Gallegos* Advice Letter, No. A-97-052, that a payment made in connection with a career fair for constituents would not result in campaign contributions or contributions to the officeholder account of a cosponsoring legislator. The event was being held for the purposes of assisting, serving, and communicating with his constituents; the event was being cosponsored by other parties in addition to himself; the official would not be receiving anything of value; and the payments by third parties were limited to providing food from a fast food restaurant and t-shirts to the attendees. In the *Leidigh* Advice Letter, No. A-97-126, we advised that donations of food and other goods and services at the behest of numerous elected officials were not contributions or gifts. The food, refreshments and incidents were being provided by third parties for an event held for the purposes of assisting, serving, and communicating with constituents of the officeholders.

We reiterated in that letter that any food, refreshments, or incidentals provided directly to the election officials, and their staff members who must report such payments, will be deemed to be gifts to the official or staff member and subject to the \$290 gift limit. (Section 89503; Regulation 18941.1.)

“Gift” is defined as any payment to the extent that consideration of equal or greater value is not received” (Section 82028.) Payments of travel to a public official may also be subject to reporting and gift limits. 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, including food, is reportable and subject to limits. (Regulation 18941.1.) This would include payments by a third party for a public official’s transportation, lodging, and subsistence 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.”

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. What constitutes “necessary accommodations” within this exception

is generally limited to the day of the speech, and possibly the days 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 days immediately before and after the speech. (*Dominguez* Advice Letter, No. A-95-032.)

Section 89506 provides exceptions from the gift limits for certain payments for transportation. These payments are not subject to the \$290 gift limit, but must be reported on the official's statement of economic interest. Section 89506(a)(1) exempts from the gift limit travel within the United States provided to an official in connection with a speech given³ by the officer. The 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. This exception does not apply if the travel and the event occur outside the United States. (*Allen* Advice Letter, No. I-94-270.) 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).)

ANALYSIS

Southern California Trade Conference

From your facts, we have concluded that the Southern California Trade Conference will be held not for campaign purposes, but rather to assist and serve constituents. The event will be cosponsored by several government agencies, as well as private sector non-profit and for-profit organizations. The event will consist of a three or four day conference and trade show, as well as three teleconferences. The purpose of the events will be to match potential exporters and importers from California to assist them in acquiring the knowledge and expertise to establish international trade relationships. There will be no campaign activity at the event.

You and your staff will be extensively involved in the planning of the events. The participants will be charged at cost and the Assembly Rules Committee will prepare a house resolution to accept and gifts and donations of in-kind services and other items.

³ "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 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. (*Hoehn* Advice Letter, No. I-92-392.)

As we reiterated in the *Gallegos* and *Leidigh* Advice Letters, *supra*, we have not yet fully developed advice or rules regarding Proposition 208 officeholder accounts. We have a definition of "campaign contribution" in Regulation 18215, however, that definition does not fully apply to officeholder accounts because it in part defines payments made in the course of the election process, while Section 85313(b) expressly prohibits officeholder contributions from being used for campaign purposes. Therefore, the Commission plans to adopt regulatory amendments that will more specifically regulate contributions made to officeholder accounts and payments to support community, legislative, and governmental public events cosponsored by officials.

In addressing the Southern California Trade Conference, it appears that the event will be held for the purpose of serving and assisting constituents. No monetary contributions will actually be deposited into either your officeholder account or your campaign account. In addition, the services you and your staff will be soliciting will benefit the trade conference and the participants rather than yourself. In this case, it appears that the event is being held for the purposes of assisting and serving your constituents. Therefore, the food, printing and preparation of written materials, computerized registration, reduced hotel rate, teleconference air time, booth construction materials, signs, facility costs, and the antiquities display provided by third parties will not be considered campaign or officeholder account contributions.

Please note, however, that any food, refreshments, or incidentals provided directly to you, other elected officials, and their staff members who must report such payments, will be deemed to be gifts to the official or staff member and subject to the \$290 gift limit. (Section 89503; Regulation 18941.1.)

Northern California Trade Conference

As described in your facts, the Northern California Trade Conference is similar to the Southern California Trade Conference, but smaller. The purposes of this trade conference are similar -- to assist California businesses in developing international trade relationships. The conference will be held during a for-profit business and trade event known as Biz Tech. The trade conference will rent a part of the convention center where Biz Tech will be held and several companies have offered to donate the costs of the facility to the Assembly Rules Committee. One company will donate the costs of the commercial advertising of the event and a utility has offered to donate all costs for a post-conference teleconference to the Assembly Rules Committee.

As was the case with the Southern California Trade Conference, it appears that the event will be held for the purpose of serving and assisting constituents. No monetary contributions will actually be deposited into either your officeholder account or your campaign account. In addition, most of the services you and your staff will be soliciting will benefit the trade conference and the participants rather than yourself. Accordingly, the facility rental, post conference teleconference costs, and the commercial advertising provided by third parties will not be considered campaign or officeholder account contributions.

Once again, any food, refreshments, or incidentals provided directly to you or your staff members who must report such payments, will be deemed to be gifts to the official or a staff member and subject to the \$290 gift limit. (Section 89503; Regulation 18941.1.)

Floating Trade Mission

The CSU Maritime Academy has invited you to advertise and solicit the participation of various companies and agencies for the CSU Maritime Academy's annual training mission. Your participation in the event will be somewhat limited. You will assist the university by advertising the event and you will spread the word that several companies and agencies will have information on board the ship. You will participate in a send-off reception, however, your staff will not be behesting food or beverages to the send-off reception. You will assist the Maritime Academy by advertising the event and soliciting the participation of various companies and agencies for the trade display on the ship. You and your staff will also help advertise the event to obtain additional humanitarian aid. Your goal in participating in the event is to "encourage awareness of the needs of our Latin American trading partners in terms of humanitarian aid and to increase our ability to expand our trade relations in that part of the world" and to assist the university. These goals appear to be related to assisting and serving your constituents. No monetary contributions will actually be deposited into either your officeholder account or your campaign account. Since the event is being held for the purposes of assisting, serving, and communicating with your constituents, the advertising, food, beverage, and incidentals will not be considered campaign contributions or gifts.

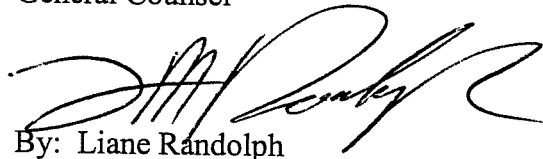
Some legislators may join the training mission in Acapulco, Mexico for a presentation of humanitarian aid. The Mexican government or the CSU Foundation may provide legislators with lodging and meals for one or two days. As we noted above, things of value provided directly to you, or your staff members who must report such payments, are considered gifts. (Section 89503; Regulation 18941.1.) Section 89506 permits a public official to accept travel from a foreign government, such as Mexico, if the transportation and related lodging and subsistence are reasonably related to a legislative or governmental purpose or an issue of state, national, or international public policy. (Section 89506(a)(2).) The presentation of humanitarian aid appears to be reasonably related to a governmental purpose and an issue of international public policy. Accordingly, if Mexico pays for lodging and subsistence, the payments will not be considered gifts and will thus not be reportable or subject to the gift limit. You stated that the CSU

Foundation is a non-profit corporation, however, you did not give us any facts as to what type of nonprofit corporation CSU is. If the CSU Foundation is a charitable or religious organization tax exempt under Section 501(c)(3) of the Internal Revenue Code, then the CSU Foundation may pay for the lodging and meals.⁴

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 black ink, appearing to read "Liane Randolph", written over a horizontal line.

By: Liane Randolph
Staff Counsel, Legal Division

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⁴ In some instances, a nonprofit corporation may be a controlled committee of the officeholder. For instance, if the candidate exercises significant influence over the organization or acts jointly with the organization or if the organization is operated for political purposes, the committee will be considered controlled. (Regulation 18217(a).) We have no facts here to indicate that the nonprofit CSU Foundation is your controlled committee.