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FAIR POLITICAL PRACTICES COMMISSION

April 21, 1997

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**Re: Your Request for Advice
Our File No. I-97-174**

Dear Mr. Leidigh:

This letter is a response to your request for advice on behalf of the Assembly Rules Committee and the Senate Rules Committee regarding the Political Reform Act (the "Act").^{1,2} We would be happy to provide formal advice to any legislator or staff member with a specific issue.

I. QUESTIONS

(1) May campaign funds raised before January 1, 1997, be used to pay for the travel, accommodations, and meals of the following persons who may make the annual Legislative Delegation trip to Washington, D.C.?

- (A) Legislators whose travel, accommodations, and meals are not being paid for by the Legislature?
- (B) Members of the households of legislators in the delegation?
- (C) Members of the legislative staffs of legislators in the delegation?

(2) May a legislator's personal funds be used to pay for the travel, accommodations, and

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

² We are unable to issue formal written advice since your advice request did not satisfy the requirements in Regulation 18329, e.g., you have not identified the members of the delegation, or the anticipated private sponsors of several of the events discussed in this letter. However, because the members of the delegation are a finite, readily identifiable group, we have decided to issue informal advice. Be advised that this advice applies only to formally designated members of the delegation, and to the actual sponsor of each event as described in your advice request.

meals of the following persons who may make the trip to Washington, D.C.?

- (A) Legislators whose travel, accommodations, and meals are not being paid for by the Legislature?
- (B) Members of the households of legislators in the delegation?
- (C) Members of the legislative staffs of legislators in the delegation?

(3) Will gifts and/or contributions to members of the delegation result from any of the events described below?

II. CONCLUSIONS

(1) Because the trip is directly related to a legislative purpose, a legislator may use campaign funds raised prior to January 1, 1997, for these expenses.

(2) A legislator who is a member of the delegation may use his/her personal funds to pay for travel, accommodations, and meals for himself/herself, accompanying household members, and accompanying staffers. The legislator may be reimbursed for the expenditure of personal funds from pre-January 1, 1997, campaign funds or from officeholder account funds. If the expenditure of personal funds is not reimbursed in accordance with Section 89511.5(b), then the expenditure will be recharacterized as a nonmonetary contribution to either the officeholder account or a campaign account, at the officeholder's election (see Section 89511.5(d)). Although the nonmonetary contribution must be reported on the appropriate campaign statement, or reflected on the officeholder account's books, it will be otherwise without consequence for purposes of the Act.

(3) Based upon the facts about the events provided in your advice request, no contributions result from the described events. However, several of the events will result in gifts, including reportable gifts, to delegation members.

III. FACTS

The Legislature is planning its annual Washington, D.C. Legislative Delegation Trip. Most of the delegation will leave Sacramento on Sunday, April 27, 1997, and return on Wednesday, April 30, 1997. The bipartisan delegation, comprised of members and staff, will represent the state's interests in a dialogue with national legislative and administrative officials. The delegation's trip is an official legislative activity, and involves no campaign activity by any of the participants.

Costs of travel, accommodations, and meals for delegation members will be borne by the Legislature. At least one legislator proposes to use campaign funds raised before January 1, 1997, and/or personal funds to pay for his/her travel, accommodations, and meals. At least one legislator proposes to use such funds to pay for the travel, accommodations, and meals of his/her accompanying staff members. At least one legislator proposes to use such funds to pay for the travel, accommodations, and meals of members of their households who will accompany them.

The delegation's itinerary includes meetings and working meals at which members of the delegation will interact with federal government officials. It also includes two receptions at which delegation members will interact with not just government officials but also with members of the private sector. These events are:

- A. Reception, Sunday, April 27. This event is a welcoming reception at which delegation members will have an opportunity to interact with federal policymakers who may have a significant impact on California issues, and with business leaders. A private sponsor has offered to underwrite the costs of the event. Invitations will be extended to delegation members, accompanying family members, federal officials, and private sector individuals. All invitees will attend without charge; the full cost of the event will be borne by the private sponsor. The cost per attendee will be less than \$50. Legislative staff may participate in the arrangement for this reception to the extent of designating food items and providing the sponsor with a list of delegation members to the private sponsor.
- B. Breakfast, Monday, April 28. This event is a working meal at the delegation's hotel. A panel of speakers will brief delegation members on pending Washington matters. The Legislature will pay the full cost of each delegation member's meal. At least one legislator proposes to use campaign funds raised before January 1, 1997, and/or personal funds to pay for his/her meals, and those of accompanying staff.
- C. Lunch, Monday, April 28. This event is a working meal attended only by delegation members, who will be briefed by a speaker in preparation for afternoon meetings with federal officials. The Legislature will pay the full cost of each delegation member's meal. At least one legislator proposes to use campaign funds raised before January 1, 1997, and/or personal funds to pay for his/her meals, and those of their accompanying staff.
- D. Breakfast, Tuesday, April 29. This event is a meal at the Capitol, hosted by the California Congressional Delegation, which may be sponsored by a Washington, D.C. non-profit corporation whom you have not identified. All arrangements for this event are being handled by the Congressional Members and their staffs. The total cost of this event is less than \$50 per attendee.
- E. Lunch, Tuesday, April 29. This event is a working lunch for delegation members, Members of Congress, and congressional staff. It will be hosted by the California Congressional Delegation, and may be sponsored by a Washington, D.C. non-profit corporation whom you have not identified. All arrangements for this event are being handled by the Congressional Members and their staffs. The total cost of this event is less than \$50 per attendee.
- F. Reception, Tuesday, April 29. A private sponsor (different from the private sponsor for

the April 27 reception) has offered to underwrite the costs of the event. Delegation members will again have an opportunity to interact with federal policymakers who may have a significant impact on California issues, and with business leaders. Invitations will be extended to delegation members, accompanying family members, federal officials, and private sector individuals. All invitees will attend without charge; the full cost of the event will be borne by the private sponsor. The cost per attendee will exceed \$50, although you have not specified by how much. Legislative staff may participate in the arrangement for this reception to the extent of designating food items and providing the sponsor with a list of delegation members to the private sponsor.

IV. ANALYSIS

A. Question (1)

Regulation 18531.1(b) provides that campaign funds raised prior to January 1, 1997 (i.e., the effective date of Prop. 208) may be used for any purpose permitted by Sections 89510-89518, inclusive (the "personal use" rules).

Campaign funds may be used to pay for the expenses of travel and necessary accommodations of a candidate/officeholder, his/her accompanying household, and accompanying members of his/her staff when the expenditures are directly related to a political, legislative, or governmental purpose. (Section 89513(a), Section 89513(a)(2).) The delegation's trip to Washington, D.C. is directly related to a legislative purpose. (See the *Montgomery* Advice Letter, No. A-91-110.) Therefore, legislators who are members of the delegation may use campaign funds raised prior to January 1, 1997, to pay for the travel and necessary accommodations for themselves, their accompanying household,³ and their accompanying staff.

The use of campaign funds to pay for the travel, lodging and subsistence of members of the staff, as authorized under Section 89513 (see preceding paragraph), would not be gifts to the staff members. (Section 89506(d)(4), Regulation 18950.1(c).)

B. Question (2)

Under Section 89511.5(a), an incumbent elected officer may use his/her personal funds for expenses associated with holding his/her office. If the incumbent elected officeholder is *not* reimbursed within 90 days of a cash expenditure or within 90 days of the of the end of the billing period for a credit card or charge account expenditure (see Section 89511.5(b), (c)), then the expenditure must be reported on the appropriate campaign statement as a non-monetary contribution. (Section 89511.5(d); *Ferguson* Advice Letter, No. A-92-276.)

³ For these purposes, "household" is defined as "the candidate's or officeholder's spouse, dependent children, and parents who reside with the candidate or elected officer." (Section 89511(b)(4).)

Section 89511.5 was added to the Act *before* Proposition 208. In the pre-Proposition 208 era, before the advent of statutory officeholder accounts (Section 85313) and before the new restrictions on post-election use of campaign accounts (see, e.g., Section 85305(c)), successful candidates continued to use their campaign accounts as a source of funds for officeholder expenses. (See Section 89510(b).) In this context, considering also the “one bank account” rule (Section 85201), Section 89511.5 makes perfect sense. It allows an incumbent officeholder to use personal funds for expenses associated with holding office without depositing the funds into the campaign account, provides for optional reimbursement, and also provides a means for the public to know how much money is being spent without unnecessarily restricting the expenditures. This final end is accomplished by recharacterizing the expenditure of personal funds as a nonmonetary contribution which appears on the campaign statement. This recharacterization was without consequence to the incumbent officeholder because there were no contribution limitations before Proposition 208.

After Proposition 208, there are, of course, contribution limits and blackout periods. There are also officeholder accounts. Thus, the automatic attribution of the nonmonetary contribution resulting from the recharacterization of the personal funds expenditure (see Section 89511.5(d)) to the *campaign* account raises new issues.

However, under Section 85301(e), the contribution *amount* limitations in Proposition 208 do *not* apply to a candidate’s contributions of personal funds. Also, we have advised that the fundraising blackout periods imposed by Section 85305 do *not* apply to a candidate’s contributions of personal funds. (*Rosenthal* Advice Letter, No. I-97-063a.) Therefore, even if a nonmonetary contribution to a campaign account results from the unreimbursed expenditure of personal funds by operation of Section 89511.5(d), there will not be a violation of the Act.

Section 89511.5(d) must be reinterpreted to account for the allowance of formal officeholder accounts in the Act (see Section 85313). After Proposition 208, we interpret Section 89511.5(d) to allow the incumbent elected officeholder who expends personal funds without reimbursement for officeholder expenses to elect whether the resulting nonmonetary contribution is attributed to a campaign account or to his/her officeholder account. As explained in the preceding paragraph, attribution to a campaign account is without consequence as to the Act’s contribution limits (both amount and timing). It would be illogical for attribution to an officeholder account to have consequences when attribution to a campaign account does not. Also, there is no possibility of corrupting influence from the expenditure of an officeholder’s personal funds. If anything, this seems to be a practice which should be encouraged. Therefore, if the incumbent elected officeholder elects to attribute the nonmonetary contribution to his/her officeholder account, it will *not* count against the \$10,000 per year fundraising limit (see Section 85313(a)) or the \$250 per contributor per year limit (see Section 85313(b)).⁴ This interpretation

⁴ In the *Ackerman* Advice Letter, No. A-97-065, we advised that in-kind contributions to an officeholder account may not exceed the \$250 per contributor and \$10,000 per year limits of Section 85313. However, *Ackerman* addressed in-kind officeholder account contributions from third parties, i.e., not an officeholder’s

advances what we understand to be the purposes of Section 89511.5: it allows incumbents sufficient flexibility to use personal funds for officeholder expenses while allowing the public to “follow the money.”

Applying this interpretation to your question, a legislator who is a member of the delegation may use his/her personal funds to pay for travel, accommodations, and meals for himself/herself, accompanying household members, and accompanying staffers. The legislator may be reimbursed for the expenditure of personal funds from pre-January 1, 1997, campaign funds or from officeholder account funds. If the expenditure of personal funds is not reimbursed in accordance with Section 89511.5(b), then the expenditure will be recharacterized as a nonmonetary contribution to either the officeholder account or a campaign account, at the officeholder’s election (see Section 89511.5(d)).⁵ Although the nonmonetary contribution must be reported on the appropriate campaign statement, or reflected on the officeholder account’s books, it will be otherwise without consequence for purposes of the Act.

The legislator’s expenditure of personal funds to pay for the travel, accommodations and meals of members of his/her staff would not be gifts to the staff members subject to limits. A payment for travel, including actual transportation and related lodging and subsistence, is not subject to the gift limit if (1) the travel is reasonably related to a legislative purpose; (2) the travel is in connection with a “speech given” by the official; (3) the expenses are limited to the day immediately preceding, the day of, and the day immediately after the “speech;” and (4) the travel is within the United States. (Section 89506; Regulation 18950.1(a)(1), (2).) A “speech given” is defined to include participation in, among things, a seminar. (Regulation 18931.1.) Given the obvious lack of potentially corrupting influence in this particular circumstance, we interpret the meetings with federal officials which occur on April 28 and 29 to be sufficiently similar to “seminars” to allow application of this provision to the staffer’s travel. We have already concluded that delegation’s activities are directly related to a legislative purpose. The delegation’s travel begins the day before the first day of meetings and concludes on the day after the last day of meetings. The travel is entirely within the United States. Therefore, we conclude that a legislator’s payments from personal funds for the travel, accommodations and meals of members of his/her staff would not be gifts subject to limits. (*Ibid.*) They would, however, be reportable.

C. Question (3)

1. The receptions on Sunday, April 27 and Tuesday, April 29.

personal contributions. Thus, the present advice is consistent with *Ackerman* in that *Ackerman* implicitly excluded personal contributions.

⁵ To whatever extent other Commission advice on this point, whether written or by telephone, conflicts with the advice in this letter and in the *Ferguson* letter, supra, that advice should be considered superseded by this letter.

Under the Act, a "contribution" is a payment made for political purposes for which full and adequate consideration is not made. (Section 82015; Regulation 18215(a).) A payment is "for political purposes" under two circumstances: (1) if it is for the purpose of influencing or attempting to influence the voters for or against a candidate or measure; *or* (2) if it is "made at the behest of," among others, a candidate or his/her agent. (Regulation 18215(a)(1)-(2).) "Made at the behest of" means 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.) We have consistently advised that payments received by a candidate, or made at the behest of a candidate are presumed to be contributions, unless some exception exists. (*Wierbinski* Advice Letter, No. A-96-106, Regulation 18215.)

The payments for the reception expenses by the private sponsors would self-evidently not be for the purpose of influencing voters about a candidate or measure. A more difficult question is whether the private sponsors' payments for reception expenses would constitute contributions to the attending legislators because they would be made in coordination or cooperation with--in other words, at the behest of--the legislators and/or staffers. In the case of each reception, legislative staff would participate to some degree in the arranging of the receptions by designating food items and by providing a list of delegation members to the private sponsors so that invitations may be sent.

A rigidly literal interpretation of the Regulation 18215(a)(2) and an expansive reading of Regulation 18225.7 arguably leads to the conclusion that the private sponsors' payments are made at the behest of the legislators because the staffers' participation in arranging the receptions, no matter how minimal, constitutes "cooperation" or "coordination." However, we favor a common sense interpretation of the definition of "made at the behest of." More specifically, we interpret Regulation 18225.7 to require that the "cooperation," "coordination," etc., be more than minimal or ministerial interaction between the maker of the payments and the candidate, or his/her controlled committee, or agent. Where the impetus for the event comes from a party other than the candidate/officeholder, and where the "coordination" is minimal, we advise that a third party's payments related to the event are not contributions simply because of the minimal communication between the candidate/officeholder (or his/her committee or agent) and the third party. Whether the coordination, consultation, etc., is sufficient to characterize the resulting payments as "made at the behest of" is, inevitably, a case-by-case determination, depending upon the entire factual circumstances.

Here, the offer to sponsor the events came from the private parties; the legislators and staff need only accept the offer. The staff's participation in arranging the event, as described in your letter, is indeed minimal. For example, providing the list of delegation members to the sponsor for the purpose of facilitating invitations is essentially a ministerial task. Thus, the payments by the private sponsors for the receptions on April 27 and April 29 will not constitute contributions to the legislators.

The payments do, however, constitute gifts to the attending delegation members. (Section 82028.) Because the pro rata cost of the April 27th reception will be less than \$50, the

gift would not be reportable; unless, of course, the source of the gift has made other gifts to an attending delegation member which aggregate to more than \$50 in the calendar year. (Section 87207.) Because the pro rata cost of the April 29th reception will be more than \$50, the gift would be reportable. (*Ibid.*)

2. Breakfast and Lunch on April 29th.

You have stated that each of these events may be sponsored by a private party. The payments for these events by the private sponsors would self-evidently not be for the purpose of influencing voters about a candidate or measure. Therefore, they do not constitute contributions to the legislators under Regulation 18215(a)(1). Because all coordination for these events is being handled by Congressional members and staffers, Regulation 18215(a)(2) is not relevant. Therefore, neither of these events will result in a contribution.

Each will, however, result in a gift to the attending delegation members. Because the pro rata cost of each event will be less than \$50, the gifts are not reportable ; unless, of course, the source of the gift has made other gifts to the attending delegation members which aggregated to more than \$50 in the calendar year. (Section 87207.)

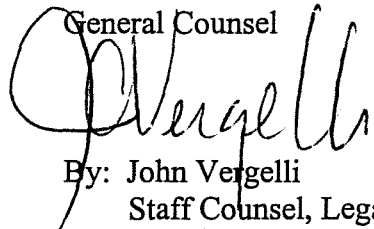
3. Breakfast and Lunch on April 28th.

We do not interpret either of the events planned for April 28 to result in a gift to any of the members of the delegation. If the meals are paid for by the delegation members' agency (i.e., the Legislature), then no gift results under Section 82030(b)(2). If the meals are paid for from campaign funds, then no gift results under Section 89506(d)(4) and Regulation 18950.1(c) (see Part IV.A, above). If the meals are paid for from the personal funds of a legislator, then no gift subject to limits results for the reasons stated in part IV.B., above.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: John Vergelli
Staff Counsel, Legal Division

SGC:JV:ak