

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 2, 1997

Greg Schmidt
Secretary of the Senate
California Legislature
Senate Rules Committee
State Capitol, Fourth Floor
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. A-97-366**

Dear Mr. Schmidt:

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

QUESTIONS

1. May Senator Monteith and Assemblyman Cardoza host a two-day Rural Education Summit in the manner described below without donations by third parties resulting in either campaign contributions or contributions to their officeholder accounts?
2. Will attendance at the event be considered a campaign contribution or a gift to the public officials who attend?

CONCLUSIONS

1. Yes. Donations to the Rural Education Summit will not result in campaign contributions or contributions to the legislators' officeholder accounts because: (1) the event will assist or serve the legislators' constituents; (2) no campaign activity will take place at the event; (3) the event is being co-sponsored by other persons; and (4) neither the legislators nor their officeholder accounts will receive any payments as a result of the event.

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

2. No. However, any food, refreshments or incidentals provided to the public officials will be deemed to be gifts subject to the gift limits.

FACTS

Senator Monteith, Assemblymember Cardoza, and a school district are planning a two-day Rural Education Summit where educators, administrators and other elected officials will meet and discuss a variety of education issues specific to rural communities. Ideas and data concerning educational issues in underserved areas will be presented by education experts. The overall purpose of the summit is to identify potential legislative and governmental actions to improve education within rural districts.² No reference to an elected official's candidacy for office will be permitted and no materials will include express advocacy. The hosting local school district is within the districts of the legislators.

The event would take place in October 1997, at a conference site near Yosemite, within Senator Monteith's district and in close proximity to Assemblymember Cardoza's district. Participants will be responsible for their own travel and accommodations. For Senators and Senate employees who participate in the summit, travel and accommodations will be paid for with legislative funds. In consideration for anticipated reservations (approximately 400 people are expected to attend the event), the facility where the event will take place will waive its conference room rental fee and provide a sound system at no charge. This is a standard business practice for the conference site.

Invitations to the summit will be prepared and mailed by the Senate and Assembly. Distribution of materials (agendas, programs, information brochures, etc.) at the summit will also be prepared and paid for by the Senate and Assembly. All such materials will comply with the mass mailing regulation.

The local school district will expand its current web site to include information on the summit. The local school district will also provide a demonstration of the application of video conferencing capabilities for rural schools.

The Senate, Assembly and the school district would like to arrange for two co-sponsored activities during the summit which would be paid for by third parties:

1. Welcoming reception - to be held in the evening prior to the summit. Various wine and cheese manufacturers and vendors (including a lobbyist employer) at the behest of the Senate and Assembly will donate goods for the reception. The estimated cost is \$1,500 (100 attendees at \$15).

² These facts were provided by Mr. Bob Leidigh on August 15, 1997, in a telephone conversation.

2. Breakfast meeting - to be held at the opening session of the summit. A privately held "C" corporation regulated by the PUC will pay the costs for the breakfast for all participants. The estimated cost is \$3,450 (345 attendees at \$10).

The summit will include a luncheon meeting. Each participant would be responsible for his or her own lunch, which will be held at the facility where the summit is to be held. The cost of the lunch is \$20 per attendee.

ANALYSIS

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).)³

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 who are elected officials 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.)

You have identified two types of payments that may result in contributions to the legislators. First, you ask about free conference room facilities, including a sound system. The facility where the event will take place will waive its conference room rental fee and provide the sound system at no charge. Your facts indicate that this is a standard business practice for the conference site. Under these facts, no contribution will result within the meaning of Section 82015. Goods and services received or behested by a candidate or committee at no charge or at a discount from the fair market value is not a contribution if the discount is given in the regular course of business to members of the public. (Section 82015; Regulation 18215(b)(3).)

³ 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).)

You also indicate that third parties will donate food for the attendees at a reception and at a breakfast meeting. With respect to donations of food, we have advised prior to January 1, 1997, 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 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 prior to January 1, 1997, 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. In addition, pursuant to Regulation 18941.1, a payment to an elected officer for his or her food is a gift.

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 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 another advice letter, we advised that donations, including food, to the "Recognition Day" event (an event organized by the Administration and Legislature to recognize the efforts of emergency workers and volunteers who assisted Californians in the floods of January 1997) would not be considered campaign contributions to the officeholders nor contributions to their officeholder accounts where the event is being held for the purposes of assisting, serving and

communicating with constituents of the officeholders. (*Leidigh* Advice Letter, No. A-97-126.) More recently, we advised the Speaker of the Assembly that his actions (and those of his staff) to organize the annual “thank you” picnic at the conclusion of the budget process was an effort to serve his constituency, which we advised is the state for purposes of that letter. (*Leidigh* Advice Letter, No. A-97-329.)

As noted in all of these letters, we have not yet fully developed advice or rules regarding Proposition 208 officeholder accounts. For instance, Regulation 18215(a)(1) provides one definition of a contribution: a payment made for the purpose of influencing an election, while Section 85313 specifically prohibits officeholder contributions from being used for campaign purposes. However, Section 85313(b) states, in relevant part: “[c]ontributions to an officeholder account shall not be considered campaign contributions.” 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. Please bear in mind that the final form of any adopted regulation may deviate significantly from current advice.

We will address existing law and advice as implicated by the specific facts presented by your letter. We conclude that the Rural Education Summit is analogous to the events discussed in the letters mentioned above. The Rural Education Summit will be held within the districts of the hosting legislators, or in close proximity to the districts. A local school district will be a co-sponsor of the event, and the summit is being convened to assist and serve the legislators’ rural community constituents. There will be no campaign activity, and the legislators’ officeholder accounts will not receive any payments as a result of the event. The purpose of the event is to develop legislative and governmental strategies to improve educational services in rural communities, which include both of the legislators’ districts. Finally, this event is an official event sanctioned by the Senate and the Assembly.


Therefore, we reach the following conclusions. First, the donations of food per attendee to the Rural Education Summit, which in combination do not exceed \$25 per attendee (assuming an attendee attends both the reception and the breakfast meeting), will not result in campaign contributions or contributions to the officeholder accounts of the legislators. Second, as discussed above, the facility where the event will take place will waive its conference room rental fee and provide a sound system at no charge. This is a standard business practice for the conference site. Under these facts, no contribution would result within the meaning of Section 82015. (Regulation 18215(b)(3).) Applying the same rationale of the exception found in Regulation 18215(b)(3), if the waiver of the fees and the use of the sound system is given in the regular course of business to members of the public, no contribution to the officeholder account would result. (Section 85313.)

However, any food, refreshments or incidentals provided to any public official will be deemed to be gifts to the official subject to the \$290 gift limit under Section 89503 and the \$10 lobbying gift limit of Section 86203. (Also, see Regulation 18941.1.)

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
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