

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

August 25, 1997

Robin Parker  
Staff Counsel  
New Motor Vehicle Board  
1507 - 21st Street, Suite 330  
Sacramento, California 95814

**Re: Your Request for Advice  
Our File No. A-97-396**

Dear Ms. Parker:

This letter is a response to your request for advice on behalf of Mr. Sam Jennings regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. May Sam Jennings, Executive Secretary/Chief Administrative Law Judge of the New Motor Vehicle Board accept the Foothill Chevrolet Dealers Association's invitation to participate in a conference in Hawaii at the Association's expense?
2. Will Mr. Jennings need to report this to the Fair Political Practices Commission?
3. If Mr. Jennings is permitted to accept the Association's offer to speak at the conference, is he restricted or prohibited from involvement as a settlement conference judge and/or hearing officer in matters involving General Motors or the Association dealers? If yes, for what period of time?

### CONCLUSIONS

1. Mr. Jennings may accept the Association's invitation. However, he should be careful that he does not violate the gift limit of \$290. (See analysis.)
2. Mr. Jennings must report certain payments made by the Association. (See analysis.)

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

3. If the General Motors Corporation or individual members of the Association pays dues to the Association for the primary purpose of giving gifts to officials, then the Association, the General Motors Corporation and the individual members of the Association will each be a financial interest of Mr. Jennings. If not, only the Association will be a financial interest of Mr. Jennings. Mr. Jennings may not participate in a governmental decision that will have a reasonably foreseeable and material financial effect on any of his financial interests.

### FACTS

Sam Jennings, Executive Secretary/Chief Administrative Law Judge of the New Motor Vehicle Board, was asked to speak at an automobile dealer association meeting in Hawaii. Mr. Jennings will give a speech regarding the Administrative Procedure Act and pending legislation before the board. The Foothill Chevrolet Dealers Association will hold its annual business conference at the Mauna Lani Bay Hotel on the island of Hawaii. The Association will pay for round-trip travel and accommodations for three nights and expenses in connection with Mr. Jennings' participation in conference activities between October 27, 1997, and October 31, 1997.

### APPLICABLE LAW

The Act prohibits a designated employee of a state or local government agency from receiving honoraria<sup>2</sup> and limits gifts to \$290 per calendar year from a single source if the designated employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. (Sections 89502(c) and 89503(c).)

"Gift" is defined as "any payment to the extent that consideration of equal or greater value is not received ...."<sup>3</sup> (Section 82028.) Therefore, absent an exception, the value of a trip to Hawaii provided to a public official is considered a reportable gift to the official. (Section 82028.) In addition, payments<sup>4</sup> 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 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" and "gift limits."

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<sup>2</sup> Payments for transportation, lodging and subsistence that are exempted from the prohibition on honoraria under Section 89506 are not subject to the prohibitions on honoraria. (Regulation 18932.4.) Section 89506(b) provides that gifts of travel not described in 89506(a) are subject to the gift limits of Section 89503.

<sup>3</sup> Gifts reimbursed in 30 days are not gifts. (Regulation 18943, copy enclosed.)

<sup>4</sup> 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 subject to limits.

*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.)

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 or 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.

*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.)

*Conflict of Interests:* You may not participate in governmental decisions that will have a reasonably foreseeable and material financial effect on, among other things, a source of a gift aggregating \$290 or more received by or promised to the public official within 12 months prior to the time when the decision is made. (Sections 87100 and 87103.)

## ANALYSIS

For purposes of this letter we will assume that you would be required to report the receipt of income or gifts from the Foothill Chevrolet Dealers Association (“Association”). This would trigger the gift limit and honoraria restrictions of the Act. (Sections 89502(c) and 89503(c).) If this is not a correct assumption then the Act does not restrict your ability to receive gifts or honoraria from the Association. Nonetheless, a payment from the Association may prevent you from making a governmental decision that will have a reasonably foreseeable and material financial effect on the Association, and perhaps the General Motors Corporation and the Association’s individual members (see below), for 12 months after you receive a payment from them. (Sections 87100 and 87103.)

*Meals and Necessary Lodging:* Generally, a payment for food to a public official is a reportable gift. (Section 82028.) However, meals provided on any day where Mr. Jennings 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 Mr. Jennings would be making only one speech during his stay. Therefore, any payments for meals and beverages on the day of his speech are not reportable nor subject to gift limits. However, on any day where Mr. Jennings does not give a speech, meals and beverages would be reportable gifts subject to the gift limits.

Necessary lodging, as in the *Dominguez* Advice Letter, *supra*, would be for the day

immediately before or the day immediately after the speech. However, you have stated that Mr. Jennings would receive *three* nights accommodations. Payments for a two night stay would be necessary and not reportable nor subject to the gift limits. However, staying a third night is not necessary and payments received for the third night would be reportable and subject to the gift limits unless another exception to the gift limits applies.

Admission, refreshments and similar non-cash nominal benefits provided to Mr. Jennings during the entire event would not be reportable nor subject to the gift limits. 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.*) However, to the extent that Mr. Jennings receives gifts by way of benefits provided that are more than nominal, these payments would be considered gifts, and subject to the \$290 annual gift limit unless an exception applies.

*Travel:* The exception to the gift limits of Section 85906 apply to the travel that will be provided to Mr. Jennings by the Association. The travel, including lodging and subsistence, is reasonably related to a legislative and governmental purpose since he will provide auto dealers with details of the Administrative Procedure Act and pending legislation involving the New Motor Vehicle Board's jurisdiction. However, these payments for travel are reportable and can subject a public official to the conflict-of-interest provisions of Act.

*Potential Conflict of Interests:* A public official may not participate in a governmental decision that has a reasonably foreseeable and material financial effect on a source of a gift of \$290 or more received in the 12 months before the decision. Since payments for travel are reportable and can subject Mr. Jennings to the conflict-of-interest provisions of the Act and since airfare to Hawaii is almost certainly \$290 or more,<sup>5</sup> Mr. Jennings may not participate in any decision that will have a reasonably foreseeable and material financial effect on the Association, and perhaps the General Motors Company and the Association's individual members, for 12 months after the gift is promised or received.

Regulation 18945(a)(2) provides that if a person pays dues or makes similar payments for membership in a bona fide association, including any federation, confederation, or trade, labor or membership organization, some portion of which dues or similar payments are used to make gifts to officials, that person is not the source of the gifts to those officials. However, the person is the source of the gift if the sole or primary purpose of the dues or similar payments is to make gifts to officials. Therefore, depending on the characterization of the member's payments to the Association, Mr. Jennings may not be able to participate in decisions affecting the General Motors Corporation or its individual dealers that are members of the Association if there is a

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<sup>5</sup> Even if the payments for travel do not put Mr. Jennings over the \$290 threshold, the threshold will be met when aggregated with other reportable payments such as the unnecessary lodging expenses for the third night discussed above.

reasonably foreseeable and material financial effect on the General Motors Corporation or any of its individual dealers that are members of the Association.

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 'Marte Castaños', with a stylized flourish at the end.

By: Marte Castaños  
Staff Counsel, Legal Division

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