

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

September 8, 1997

Enrique Hernandez
Los Angeles Police Protective League
1308 West Eighth Street, Suite 300
Los Angeles, California 90017

Re: Your Request for Advice
Our File No. A-97-417

Dear Mr. Hernandez:

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

QUESTIONS

May the League donate to an elected Charter Review Commission the use office space, equipment and personnel? If so, does the free use of League resources constitute: (a) a contribution to a public official if used by an individual commissioner; (b) a gift to a public agency if provided to the Charter Review Commission as a whole; (c) a gift to a public official if used by an individual commissioner; or (d) a gift to a public official if used by Commission staff?

CONCLUSIONS

Office space, equipment and personnel provided by the Los Angeles Police Protective League, a private agency, to the Charter Review Commission does not constitute a contribution to individual commissioners as long as the resources are not used for campaign purposes. However, all of the standards of Regulation 18944.2 must be satisfied or the free use of the office space, equipment, and personnel may constitute a gift to the individual commissioners.

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

FACTS

The Los Angeles Police Protective League ("League") is the employee union and bargaining unit for sworn members of the Los Angeles Police Department of the rank of Lieutenant and above.

The voters of the City of Los Angeles recently elected the Los Angeles City Charter Review Commission. The Commission is authorized to review the City Charter and to draft proposed amendments which will be placed on a future city election ballot. As part of this task, the Commission is expected to review the civil service system which affects police officers and other city employees, as well as Los Angeles Police Department structure, operations and disciplinary procedures to the extent they are contained in the Charter.

The League would like to offer its resources such as office space, equipment and personnel at no charge to the Commission, individual commissioners and staff to be used for official Charter Review Commission business.

ANALYSIS

Contribution to a Public Official

Section 82015 defines "contribution" in pertinent part as follows:

“‘Contribution’ means a payment, a 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.”
(Emphasis added.)

Regulation 18215, copy enclosed, reiterates that a contribution is any monetary or nonmonetary payment made for political purposes. However, we have advised that additional office space provided free of charge for use as a legislative district office was not a contribution because it was not used for campaign purposes. (*Hill* Advice Letter, No. A-85-044; *Leidigh* Advice Letter, I-94-129.)

Your letter makes no mention of any connection that would lead to a conclusion that the proposed donation of office space, equipment and personnel is made for political purposes. Your letter assumes that the League's resources will be used solely for official Charter Review Commission business and not campaign purposes. Therefore, such a donation to the Commission from the League would not be considered a contribution to the individual commissioners.

Gift to a Public Official

The Act defines the term "gift" as "any payment to the extent that consideration of equal or greater value is not received." (Section 82028.) The term "payment" is defined in Section 82044 to include "a payment, distribution, transfer, loan advance, deposit, gift, or other rendering of money, property, services, or anything else of value, whether tangible or intangible."

In *In re Stone* (1977) 3 FPPC Opinions 52, the Commission determined that there may be some situations where surrounding circumstances show that the gift was made to the official's agency only, without providing any significant or unusual benefit to the official. The *Stone* Opinion outlined when gifts of travel, meals, and accommodations were deemed a gift to a public official's agency for purposes of the Act, rather than to the official using the gift. The *Stone* Opinion was codified in Regulation 18944.2. Although the regulation codifies several of *Stone*'s requirements, it also differs in several significant respects. (*McKenchnie* Advice Letter, No. I-94-190.) To determine that a gift has been made to the official's agency and not to the official or officials who use it, the following criteria must be satisfied:

"(a) A payment, which is a gift as defined in Government Code Section 82028, shall be deemed a gift to a public agency, and not a gift to a public official, if all of the following requirements are met:

- (1) The agency receives and controls the payment.
- (2) The payment is used for official agency business.
- (3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment. However, the donor may identify a specific purpose for the agency's use of the payment, so long as the donor does not designate the specific official or officials who may use the payment.
- (4) The agency memorializes the payment in a written public record which embodies the requirements of subdivisions (a)(1) to (a)(3) of this regulation set forth above and which:
 - (A) Identifies the donor and the official, officials, or class of officials receiving or using the payment;
 - (B) Describes the official agency use and the nature and amount of the payment; and
 - (C) Is filed with the agency official who maintains the records of the agency's statements of economic interests where the agency has a specific office for the maintenance of such statements, or where no specific office exists for the maintenance of such statements, at a designated office of the agency, and the filing is done within 30 days of the receipt of the payment by the agency.

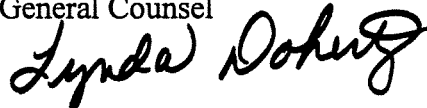
(b) Notwithstanding subdivisions (a)(3) and (a)(4) of this regulation, a donation to a California public college or university for a specific research project which is received consistent with the requirements of California Code of Regulations, Title 2, Section 18705(b) and for meals received in the course of an official fundraising activity, which qualify under federal and state law for a deduction as a charitable contribution for educational purposes, will be deemed a gift to the college or university." (Regulation 18944.2)

Regulation 18944.2 provides comprehensive standards which must be met in order for the gift to be deemed a gift to a public agency, and not a gift to a public official. You have asked three gift questions. Clearly, no gift will occur if the payment is made to the Commission as a whole. If there is earmarking for the use of specific officials, the third factor of Regulation 18944.2 would not be met.

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Lynda Doherty
Consultant, Legal Division

SGC:LD;jlw