

# SUPERSEDED IN PART



RAVI MEHTA  
CHAIRMAN

FAIR POLITICAL PRACTICES COMMISSION

by I-99-128  
(Stausball)

September 17, 1997

Kim R. Davis  
318 Walnut Tree Drive  
Colusa, California 95932

**Re: Your Request for Advice  
Our File No. A-97-468**

Dear Ms. Davis:

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

## FACTS

You are considering writing a nonfictional book with two other people. The cost to publish the book will be between \$8,000 and \$12,000. Donations or loans may be made toward the publishing of this book. You would like to be advised on the legal aspects of this venture because you are a designated employee for the State of California.

## QUESTIONS & CONCLUSIONS

1. *Are the proceeds you receive from publishing a book considered honoraria?*

A designated employee of a state agency may not accept an honorarium from any source if the employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. (Section 89502.) An "honorarium" is any payment made in consideration for any speech given, article published, or attendance at any public or private conference, meeting, social event, meal or like gathering. (Section 89501, Regulation 18931.) Regulation 18931.2 defines "article published" to mean a nonfictional written work:

"(1) That is produced in connection with any activity other than the practice of a bona fide business, trade, or profession; and

---

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

(2) That is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication.”

For purposes of the honoraria ban, “article” does not include books, plays, or screen plays. (Regulation 18931.2.) Accordingly, the proceeds you will receive from publishing the book will not be considered honoraria.

*2. If you were to leave your job, is there a time frame in which you would have to wait until you move forward with this project?*

The Act places three restrictions on the activities of designated employees of state agencies who are leaving state service. Two are post-employment, while the third regulates activities of the official before leaving:

- Section 87406 prohibits designated employees, for one year after leaving state service, from being paid to communicate with their former agency in an attempt to influence legislative or administrative action or any action or proceeding involving a permit, license, contract or transaction involving property or goods.
- Sections 87400-87405 prohibit designated employees from being paid to appear before their former agency or a court in a proceeding involving specific events (*e.g.*, a lawsuit, administrative hearing, or a state contract) in which the employee participated.
- Section 87407 prohibits designated employees from making, participating in making, or influencing a governmental decision that directly relates to a prospective employer.

It does not appear from your facts that these provisions would apply to you. However, I have enclosed an information packet regarding the “revolving door” provisions of the Act and related restrictions for additional guidance.

*3. If any said amount were donated, how will that affect you?*

The Act places limits on gifts received by designated employees of state agencies. Pursuant to section 89503, designated employees may not accept gifts aggregating more than \$290 in a calendar year from any single source if the employee would be required to report the receipt of income of gifts from that source on his or her statement of economic interests. (Section 89503; Regulation 18940.2.)

Under the conflict-of-interest provisions of the Act, you may not make, participate in making, or use your official position to influence a government decision if it is reasonably foreseeable that the decision will have a material financial effect upon a donor from which you have received gifts aggregating \$290 or more within 12 months before the decision is made. (Section 87103(e).) As a designated employee, you are required to report the receipt of gifts of \$50 or more on your statement of economic interests. (Section 87207; Regulation 18730.)

A "gift" includes any payment or other benefit provided to you for which you do not provide goods or services of equal or greater value unless the payment or benefit fits within an exception to the definition of gift. (Section 82028.) It appears from your facts that the donations made toward the publishing of the book are "gifts" that are subject to the limitations and reporting requirements of the Act. I have enclosed an information packet regarding the gift provisions of the Act for additional guidance.

4. *If any said amount is loaned, how does that affect you?*

Under the conflict-of-interest provisions of the Act, you may not make, participate in making, or use your official position to influence a government decision if it is reasonably foreseeable that the decision will have a material financial effect upon a source of income from which you have received income aggregating \$250 or more within 12 months before the decision is made. (Section 87103(c).) As a designated employee you are required to report the receipt of income of \$250 or more on your statement of economic interests. (Section 87207; Regulation 18730.)

You have not provided information indicating the source of any loan that may be made toward the publishing of the book. "Income" for purposes of section 87103(c) includes loans. (Section 82030(a).) However, the Act exempts from the definition of income any loan or loans from a commercial lending institution that is made in the lender's regular course of business on terms available to members of the public without regard to official status if the balance owed does not exceed \$10,000. (Section 82030(b)(8)(B).) In addition, loans from specified family members are excluded from the definition of income. (Section 82030(b)(9).)

I have enclosed an information packet regarding the conflict-of-interest provisions of the Act for additional guidance.

5. *If each writer (3) were to equally put in 1/3 of the cost, how would this affect you?*

As previously indicated, the Act regulates the receipt of gifts by designated employees of state agencies. If each writer contributes 1/3 of the cost toward the publishing of the book, this would not result in a gift to you since each writer is receiving equal consideration for the amount they are contributing.

Under the conflict-of-interest provisions of the Act, you may not you may not make, participate in making, or use your official position to influence a government decision if it is reasonably foreseeable that the decision will have a material financial effect upon a business entity in which you have a direct investment worth \$1000 or more or any business entity in which you are a partner. (Section 87103(a),(d).) A "business entity" includes any joint venture. (Section 82005.)

By collaborating with two other people to write a book, you are embarking on a joint venture. Accordingly, you may not make, participate in making, or use your official position to

influence a government decision if it is reasonably foreseeable that the decision will have a material financial effect upon your joint venture.

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

Sincerely,

Steven G. Churchwell  
General Counsel



By: Julia Butcher  
Graduate Legal Assistant, Legal Division

SGC:JB:tls