

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

October 21, 1997

Karen Mathews  
Stanislaus County Clerk-Recorder  
1021 I Street, Suite 101  
Modesto, California 95354

**Re: Your Request for Advice  
Our File No. A-97-518**

Dear Ms. Mathews:

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

### QUESTION

If you are considered an expert on the below issues, and consider your lectures as a separate career, can you accept a lecture fee as reportable income for disclosure?

### CONCLUSION

You may not accept an honorarium from any source if you would be required to report the receipt of income or gifts from that source on your statement of economic interests. A fee for a "speech given" is an honorarium unless the speech is given in connection with a bona fide business, trade, or profession and is unrelated to your duties as a public official. Payments for transportation in California and related lodging and subsistence received in connection with a speech are exempt from the gift and honoraria restrictions of the Act. Other payments received would be considered gifts and subject to the disclosure, disqualification and gift limits of the Act.

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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.

## FACTS

In 1994, after months of being stalked, harassed, and threatened by an anti-government militia-type group, you were assaulted in your home because of not performing a job-related duty (i.e., recording an illegal lien).

As a result, you reluctantly became an expert (this has never occurred before in the United States) in domestic terrorism, workplace violence, victims' rights, and prevention of this type of assault on elected officials.

As Stanislaus County's Clerk-Recorder and Registrar of Voters, you understand the guidelines prohibiting honorarium. However, you are asked by a number of nonprofit organizations and educational institutions such as all branches of the Anti-Defamation League (ADL) throughout the United States; California State Association of Counties (CSAC) Excess Insurance Authority; and have testified as an expert before the Senate and Congress on anti-government terrorism.

You are scheduled to lecture in St. Louis, Missouri, in ten days at the national U.S. Attorney Generals' Conference, and clarification of this matter is imperative to you. You consider your lectures a separate career.

## ANALYSIS

### *Honoraria Ban*

Section 89502(c) provides that no designated employee of a state or local government agency shall accept an honorarium from any source if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. An honorarium is defined as any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89501(a).)

Section 89501(b) provides that the term "honoraria" does not include a bona fide business, trade, or profession. (See Section 89501(b)(1).) What constitutes a "bona fide profession" is not specifically defined in the statute, however, exceptions in a statute are to be strictly construed. (*Julius Goldman's Egg City v. Air Pollution Control Dept. Of Ventura County* (1981) 116 Cal.App.3d 741.)

Regulation 18932.1 provides the criteria that must be satisfied in order to qualify for the "bona fide business, trade, or profession" exception to the honorarium ban. That regulation provides as follows:

“(a) For purposes of Government Code Sections 89501 through 89506, a business is presumed to be "bona fide" if the owner of the business has maintained the following documents for the two calendar years immediately preceding the year in which the consideration for the payment was provided:

(1) Books and records of accounting consistent with the operation of a business; and

(2) Copies of tax returns filed in connection with the operation of the claimed business.

(b) For purposes of Government Code Sections 89501 through 89506, a business that has been in existence for less than two calendar years is presumed to be "bona fide" if:

(1) Its owner has maintained records of income and expenses, consistent with the operation of a business, from the date of inception of the claimed business; and,

(2) Any three of the following are maintained:

(A) Copies of tax returns filed in connection with the operation of the claimed business for one year;

(B) Records of bank accounts or lines of credit in the name of the business;

(C) Records of purchase, lease, or rental of equipment and supplies for use solely by the business;

(D) Records of expenditures for rent, wages, business or professional insurance, or other similar, customary costs of doing business;

(E) Records of efforts to market goods or services provided by the business; or

(F) Documentation of expertise by the business operator in connection with the service provided or product sold by the business;

(c) For purposes of Government Code Sections 89501 through 89506, a trade or professional practice is presumed to be "bona fide" if either of the following applies:

(1) The tradesperson or professional practitioner possesses current licensure or certification which is issued by state or federal occupational licensing authority, the issuance of which requires a demonstration of skill and knowledge in connection with the relevant trade or profession.

(2) Where licensure or certification is not required by a governmental licensing authority, the practitioner is employed as a researcher or is a member of the faculty of a college or university.

(d) A business whose predominant activity is making speeches is not "bona fide" for purposes of Government Code Sections 89501 through 89506."

You do not provide any information regarding whether you would meet the requirements of Regulation 18932.1. Based on this regulation, unless you qualify as a bona fide business, trade, or profession, you would be prohibited from accepting any honoraria, including fees for your lectures, if you would be required to report the receipt of income or gifts from the source of the payment on your statement of economic interests. Please note, however, we have applied the "bona fide business, trade, or profession" exception only where the business or professional activity generates income independent of the public official's governmental employment or position. (*Cochran* Advice Letter, No. A-96-015; *Hodson* Advice Letter, No. A-92-648; *Hunter* Advice Letter, No. A-93-203.)

#### *Travel/Gifts*

The prohibition on receiving honoraria includes several exceptions, however. (Section 89501; Regulations 18950.1 and 18950.3.) Section 89506(d)(3) provides an exception for travel payments reasonably connected with a "bona fide business, trade, or profession" which satisfy "the criteria for federal income tax deductions for business expenses specified in Section 162 and 274 of the Internal Revenue Code, are not honoraria or gifts unless the sole or predominant activity of the business, trade, or profession is making speeches." (Regulation 18950.1(e).) We are unable to determine if this exception applies to you.

Section 89506 provides other exceptions for travel payments, advances, or reimbursements for travel reasonably related to a legislative or governmental purpose or to an issue of state, national, or governmental purpose. These payments are not prohibited or limited if either the travel is in connection with a speech given in the United States or the travel is provided by a governmental agency or a bona fide nonprofit or educational institution or a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. (Sections 89501(c), 89506(a); Regulation 18950.1.) Regulation 18931.1 defines "speech given," in relevant part, as "a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate." Your letter does not address travel reimbursement but if the standards discussed above apply to your situation, you may be able to accept payments for travel. These payments would be reportable but not subject to gift limits. (Section 87207; Regulation 18950.1.)

Payments for travel which do not fit within the exceptions outlined in Section 89506 are considered gifts subject to the gift limits in Section 89503 if they are reportable by you. (Section 89506(b).) Section 89503(c) provides that no member of a state board or commission, and no *designated employee* of a state or local government agency, shall accept gifts with a total value of more than two hundred ninety dollars (\$290) in a calendar year from any single source, if the

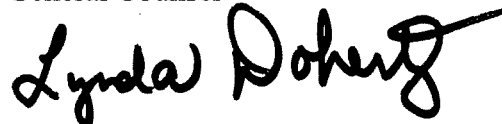
member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.<sup>2</sup>

Certain general exceptions also apply to the receipt of gifts. For instance, free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, are not payments and need not be reported by any filer. (Regulation 18950.3.) The exception in Regulation 18950.3 is limited to participation in a speech, panel, seminar or similar service and may apply to any necessary lodging and subsistence but not to payments for travel outside of California.

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  
Political Reform Consultant, Legal Division

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<sup>2</sup> A source of gifts of \$290 or more may also be a source of disqualifying income. (Section 87103(e).)