



FAIR POLITICAL PRACTICES COMMISSION

January 15, 1998

Nathan Paxton
Office of Senator Quentin Kopp
State Capitol, Room 2057
Sacramento, California 95814

**Re: Your Request for Advice
Our File No. A-97-608**

Dear Mr. Paxton:

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

QUESTION

As a member of the California Senate Associates Program, may you receive payments for nonfiction freelance articles that you write under Section 89502's prohibition on the receipt of honorarium?

CONCLUSION

If you satisfy the requirements for the bona fide business exception, you may receive payments for your nonfiction freelance articles.

FACTS

You are a member of the California Senate Associates Program. You work as a legislative aide in the office of Senator Quentin Kopp. In the past, you have done work writing nonfiction freelance articles. From 1994-1996, your IRS tax forms show that you maintained an independent business whose sole purpose was to write and sell nonfiction articles. You grossed the following in each year:

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

1994	\$595.91
1995	\$1563.51
1996	\$252.63

You did not sell any articles in 1997. You became aware of the honoraria prohibition in October 1997 and you decided not to sell any further work.

You would like to continue your business of writing and selling articles in 1998. You believe you may be exempt from the honorarium prohibitions because you have a continuing, bona fide business interest.

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).) "Article published" means any nonfictional written work that is produced in connection with any activity other than the practice of a bona fide business, trade, or profession and that is published in a periodical, journal, newspaper, newsletter, magazine, pamphlet, or similar publication. (Regulation 18931.2(a).) You publish nonfictional freelance articles. Therefore, if you are a designated employee of your office you may not accept 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.

Section 89501(b) provides that the term "honoraria" does not include earned income for personal services provided in connection with the practice of a bona fide business, trade, or profession. 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 (copy enclosed) 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, in pertinent part, 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.”

While you have provided copies of your tax returns for the last two years, you have not provided any books and records that are consistent with the operation of a business. If you have those records, then the exception found in Regulation 18932.1 would apply. Unless you meet the requirements of Regulation 18932.1, you are prohibited from accepting any honoraria 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.

Gifts

You also seek guidance regarding how Section 89503's gift limitation affects your ability to practice your writing business. The term “gift” is defined as any payment that confers a personal benefit on the recipient to the extent that consideration of equal or greater value is not received. (Section 82028.) Since you would provide a writing in exchange for payment, you would be receiving consideration of equal or greater value. Therefore, no gift would be received and Section 89503 would be inapplicable. Such payments would constitute “earned income” and would not be limited or prohibited under the Act, if the honoraria prohibition does not apply. However, these payments would be reportable on your statement of economic interests and subject you to the conflict-of interest provisions of the Act. (Sections 87103 and 87207.)

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

Sincerely,

Steven G. Churchwell
General Counsel



By: Marte Castanos
Staff Counsel, Legal Division

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