



## FAIR POLITICAL PRACTICES COMMISSION

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June 24, 1998

Raphael Sonenshein  
Executive Director  
City of Los Angeles  
Charter Reform Commission  
111 North Hope Street, Room L-33  
Los Angeles, California 90051

**Re: Your Request for Advice  
Our File No. A-98-152**

Dear Mr. Sonenshein:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. (Regulation 18329.)

### QUESTION

May you accept an honorarium for making a speech and assisting with workshops, including but not limited to, speeches, from a nonprofit group that is a disclosable source of income or gifts?

### CONCLUSION

No. You may not accept an honorarium from any source if you are required to report the receipt of income *or gifts* from that source on your statement of economic interests. You are required to report gifts from the nonprofit. Therefore, the honoraria ban applies to the nonprofit, irrespective of the location of the donor.

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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

You were hired in February 1997, by the City of Los Angeles Charter Reform Commission ("Reform Commission"), a temporary agency, to serve as Executive Director of the Reform Commission. At the time you were hired, you were a professor of political science at California State University ("CSU"). You have taught at CSU for fifteen years and are currently on a professional leave of absence. You expect to return to CSU Fullerton in 1999.

You have published numerous articles on the subject of interracial coalitions and urban politics that have appeared both in scholarly journals and in newspapers and magazines. You are the author of the book, Politics in Black and White: Race and Power in Los Angeles (Princeton University Press 1993), which won the American Political Science Association's 1994 Ralph Bunche Award as the best book in political science on racial and ethnic pluralism.

While you were a professor at Fullerton, you began receiving invitations in 1990 from a number of nonprofit organizations and national charitable foundations (including the Rockefeller Foundation, the Annie E. Casey Foundations and others) to assist them in the development of programs for children and youth. They felt that your expertise in political communication, and experience as a public speaker, workshop leader, and technical advisor would help groups working with children and youth to develop more coherent messages to enhance their public support.

Since 1990, you have been invited to conferences and meetings in Boston, Baltimore, Kansas City, San Diego, and other cities to work with boards, staff, and others. Your work usually involves a keynote speech, although you have also conducted workshops and provided other technical support. In one case, you helped organize a conference at the Wingspread Center supported by four national foundations.

In most cases you have received an honorarium for your work, ranging from \$500 to \$1,250, in addition to travel expenses. It was your hope to maintain your involvement in these projects after becoming involved with the work of the Reform Commission.

Several months ago, you were invited to a meeting in San Diego sponsored by the Urban Health Initiative, a nonprofit group funded by the Robert Wood Johnson Foundation. The Urban Health Initiative is based in Seattle, Washington, and was bringing a number of grantees from various cities to San Diego to develop leadership skills. You were invited to give the keynote speech, and then the next day to help run a series of workshops built around the ideas you had presented. The organizers of the conference paid your expenses and also offered to pay you an honorarium of \$1,000, based on \$500 for each day of work. You have not yet invoiced them, pending clarification of your role.

The Reform Commission is charged with making recommendations for revisions of the City Charter of Los Angeles. These recommendations will be transmitted to the city council for approval and placement on the ballot. The work of the Reform Commission encompasses a broad range of issues involving the structure and processes of city government. The Reform Commission has adopted a conflict of interest code, which was approved by the city council. You are required to file statements of economic interests pursuant to the code and your disclosure category requires you to disclose "any investment, income, or interest in real property, as defined by this code." The definitions of those terms are the same as the definitions in the Act.

You believe that you should not accept honoraria from any agency that does business with the City of Los Angeles. When you gave a speech to the National League of Cities, meeting in Los Angeles, you did not ask for nor did you receive any honorarium. You would like to know if an agency that may not be a disclosable source of income to you (such as the Seattle agency meeting in San Diego) would be disclosable as a source of gifts -- not limited by jurisdiction.

## 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. (*Mathews Advice Letter*, No. A-97-518.) 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 earned income for personal services provided in connection with 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 (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.

Earned income differs from an honorarium because a payment characterized as "earned income" is based on the market value of *services* rendered, while an honorarium reflects values associated with the *status* of the speaker.

The predominant activity of the occasional work you perform usually involves a keynote speech, although you have conducted workshops and provided other technical support. The payment you receive from the Urban Health Initiative may or may not constitute an honorarium, as it may be considered earned income for personal services customarily provided in connection with the practice of a bona fide business.

You do not provide any information regarding whether you would meet any of the exceptions 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; *Hunter* Advice Letter, No. A-93-203.) Based on the information you have provided and our discussion on June 19, 1998, it appears that you would have to report gifts from the Urban Health Initiative on your statement of economic interests.

Section 82030 provides, in part:

“‘Income,’ other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.”

Therefore, while the income you report is limited to sources in your jurisdiction, disclosure of gifts is not limited based on the location of the donor. (Section 82030; *Shanbour* Advice Letter, No. A-91-050.) Therefore, you cannot accept an honoraria from the nonprofit unless an exception applies.

#### *Travel/Gifts*

The prohibition on receiving honoraria includes other exceptions. (Section 89501; Regulations 18950.1 and 18950.3.) Section 89506(d)(3) provides that 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).) As discussed above, since we do not know if the bona fide business trade or profession exception applies to you, we cannot determine if this 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 states that you have received reimbursement for travel expenses. As stated above, the Commission does not provide advice regarding past conduct. However, if the standards discussed above apply to a prospective situation, you may be able to accept payments for travel in the future. These payments would be reportable but not subject to gift limits. (Section 87207; Section 89503(c); Regulation 18950.1.)

Section 82028(a) defines a "gift" as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received...." Payments<sup>2</sup> for travel which do not fit within the exceptions outlined in Section 89506 are considered gifts subject to the gift limits in Section 89503.<sup>3</sup> (Section 89506(b).)

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.

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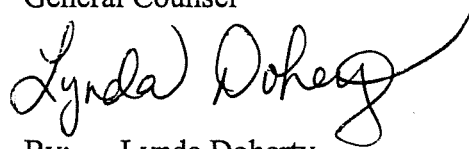
<sup>2</sup> A "payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible. (Section 82044.) Unless an exception applies, any payment to a public official is subject to limits.

<sup>3</sup> A source of gifts of \$290 or more may also be a source of disqualifying income. (Section 87103(e).) Gifts reimbursed within 30 days are not gifts. (Regulation 18943, copy enclosed.)

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 cursive script that reads "Lynda Doherty". The signature is written in black ink and is positioned above the typed name.

By: Lynda Doherty  
Consultant, Legal Division

SGC:LD:tls

Enclosures