



## FAIR POLITICAL PRACTICES COMMISSION

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November 12, 1998

Mr. Don Benninghoven  
Executive Director  
League of California Cities  
1400 K Street  
Sacramento, California 95814

**Re: Your Request for Advice  
Our File No. I-98-177**

Dear Mr. Benninghoven:

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

### QUESTION

The League of California Cities offers to reimburse each member of its board of directors for travel and lodging expenses associated with his or her service as a board member. The League also pays for meals, coffee and other expenses associated with League board and committee meetings. Are these payments reportable under the Act, or do they fall under the exemption in regulation 18950.3 for an official's travel to make a speech within California.

### CONCLUSION

The League's travel reimbursements to city officials for service on the League's board and committees do not fall within regulation 18950.3's exemption for travel to make a speech within California. Under the Act, the board members are required to report reimbursements for transportation, lodging and meals from the League of California Cities as income or gifts on their statements of economic interests.

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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. Because your letter requests general advice and does not pertain to a particular official or event, we are treating it as a request for informal assistance, indicated by the file number prefix "I." Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice.

## FACTS

You have provided the following background and informational facts about the League of California Cities (the "League"). The League is an association of cities created by city officials in 1898 to help city officials better serve their citizens. The League's various programs are conducted under the direction and supervision of the League's volunteer board of directors, which is made up of elected and appointed city officials from throughout the state. The League also has a number of committees of city officials that make recommendations to the League's board and perform other services for the League.

The League of California Cities is a voluntary membership association of California cities. The League's mission is threefold: (1) to educate city officials and coordinate the communication of ideas and information among city officials; (2) to develop broad support on issues and advocate those views to other governmental agencies and the public; and (3) to improve the quality of life in cities by assisting officials to make city services more responsive to its citizens.

The League's principal means of addressing policy and organizational issues is through its volunteer board of directors. The League's board consists of at least 37 directors, each of whom must be a city official from one of the League's member cities. Participation on the board requires intrastate travel to quarterly board meetings and, in some instances, interstate travel to attend National League of Cities events. The League's board members are volunteers; they receive no compensation for their time in statewide service to the League and all its member cities.

The League pays for the expenses associated with League board members' attendance at board meetings (typically meals served at board meetings). In addition, the League offers to reimburse board members for the costs associated with traveling to and from some board meetings and any overnight stays associated with two-day board meetings. In some instances a board member's city will advance the travel expenses and the League will reimburse the city. In other cases, the League will reimburse the board member directly.

You state that the League does not pay a general per-meeting stipend, it reimburses board members for their travel costs. The League's reimbursement policy provides for a \$20 per day allowance for incidental expenses, which not all board members claim out of a recognition that such an amount could be considered reportable income if not backed up by actual travel expenses.

The League does not pay the expenses associated with board meetings held at the League's annual conference on the theory that each director would already be attending the conference. Also, the League does not reimburse travel expenses to its non-board committee meetings, although it typically provides coffee and lunch (usually sandwiches) at all-day committee meetings.

In addition, for League board executive committee members, the League offers to reimburse travel expenses associated with travel to League divisions to make presentations on behalf of the League, travel to National League of Cities meetings to represent California cities' interests nationwide, and travel to meet with state officials, including testimony before legislative committees.

In sum, service in League leadership roles, including service on the League board, is on a volunteer basis. Consistent with the practices of most non-profits,<sup>2</sup> the League offers to reimburse each member of its board of directors for the travel and lodging expenses associated with his or her service as a board member. (See League Bylaws, art. IV, §9.) The League also pays for meals, coffee and other expenses associated with League board and committee meetings.

The issue presented is whether any of these payments are reportable within the meaning of the Act. You argue that the nature of the services provided by League board and committee members constitute a "similar service" under the Commission's regulations, and that therefore, the reimbursements from the League need not be included in city officials' reports of gifts and income to the Commission.

#### ANALYSIS

The Act is designed to prevent a public official from making a governmental decision if the official has a financial interest in that decision. (Section 87100.) To prevent conflicts of interest, the Act requires all public officials to file a statement of economic interests ("SEI") each year. Public officials file their SEI on Form 700 disclosing their investments, real property, and income and gifts that they have received during the year. (Section 87200 et seq.) In addition, the Act prohibits a public official from making a governmental decision that affects an entity or individual that has been a source of income or gifts to the official of \$250 or more in the past 12 months. (Section 87103.) Further, it prohibits public officials from accepting gifts of \$290 or more per year from a single source. (Section 89503.)

One of the most common benefits a public official receives is a third party paying for his or her travel expenses to make a speech, attend a conference or seminar, or inspect a facility. Travel expenses under the Act include transportation, accommodations and meals. Examples of third parties who sometimes pay for officials' travel are private businesses and corporations; private interest groups and organizations (including 501(c)(4) organizations); foreign governments; government agencies other than the one for which the official works; and nonprofit charitable, religious or educational 501(c)(3) organizations.

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<sup>2</sup> See, e.g., Cal. Corp. Code §5239(b) (payment of per diem, mileage or other reimbursement of expenses does not affect director's status as a volunteer).

Under the Act, when a third party pays for a public official's travel, the payments are generally considered a *gift* to the public official. Less commonly, if the public official has provided consideration (e.g., performed work or services) in exchange for the payments, the payments for travel are considered *income* to the public official. Reflecting this, the statement of economic interests (Form 700) has Schedule F, titled "Income/Gifts— Travel Payments, Advances, and Reimbursements." On Schedule F, public officials disclose any payments for travel that they have received during the year, the name and address of the entity that paid for the travel, the amount of the payment, date, and whether the payment was a gift or income.

The Commission previously advised you that city officials serving as League board members who receive reimbursement for their travel to League board meetings, must report the travel payments from the League on Schedule F as income or gifts.<sup>3</sup> (*Benninghoven Advice Letter*, No. I-93-298.)

Many city officials who serve as League board members do not understand why or do not think they should have to report travel reimbursements from the League as income on their SEIs. They view the League of California Cities, an organization that brings officials from California's cities together, as almost an arm of government. In volunteering to serve on the League's board, they are increasing their effectiveness as city leaders and serving the public by gaining knowledge and ideas from other cities to be put to use in their city. At the League's quarterly board meetings and committee meetings, they are doing serious, substantive work. They thus find it odd that travel reimbursements from the League must be reported as income or gifts under the Act.

The Act has certain exceptions to the \$290 per year gift limit and reporting requirements for travel payments, such as the exception for travel paid for by a government agency or a nonprofit 501(c)(3) organization, and the exception for an official's travel to make a speech within California. As discussed below, however, these exceptions do not apply to travel reimbursements from the League to city officials for their service as League board or committee members.

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<sup>3</sup> In the *Benninghoven Advice Letter*, No. I-93-298, we discussed how to determine whether payments to city officials to attend League functions should be reported as income or gifts:

"... if a city official can demonstrate that he or she provided value in return for paid travel expenses, the official received income and not a gift. If the city officials are representing the League on official League business, it appears that they are providing consideration and the travel reimbursement would not be a gift.

If the official does not provide consideration for the reimbursement, the reimbursement for travel is a reportable gift ...."

Refer to the *Allen Advice Letter*, No. A-96-121, for further discussion of when officials have provided consideration of equal or greater value in return for travel payments.

**1. Exemption from Reporting for Travel Paid for by a Government Agency or 501(c)(3) Nonprofit Organization.**

In 1993, the League wrote the FPPC arguing that travel reimbursements paid by the League to city officials were exempt from the definition of income in section 82030(b)(2) and thus did not have to be reported by city officials on their SEIs, because the League is both a governmental and educational institution.

The Act's definition of "income" at section 82030 exempts government salary:

"(b) 'Income' also does not include:

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(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code."<sup>4</sup> (Section 82030(b)(2).)

The FPPC disagreed. We concluded that "the reimbursements that city officials receive from the League are not excluded from the definition of income and may be considered either income or a gift." *Benninghoven* Advice Letter, No. I-93-298. Our past advice letter concluded that the League was not a "bona fide educational, academic, or charitable organization" within the meaning of section 82030(b)(2), which the Commission had interpreted to mean 501(c)(3) organizations (and which was later amended to specifically refer to 501(c)(3) organizations).<sup>5</sup>

Your current advice request continues to emphasize the League's nonprofit status, noting that under California law, the League is a nonprofit mutual benefit corporation governed by Cal. Corp. Code §§ 7110 *et seq.* Under state law, however, nonprofit mutual benefit corporations are distinct from organizations dedicated solely to charitable, religious, or public purposes. Section 7111 of the nonprofit mutual benefit corporation law states:

"Subject to any other provision of law of this state applying to the particular class of corporation or line of activity, a corporation may be formed under this part for any lawful purpose; provided that a corporation all of the assets of which are irrevocably dedicated to charitable, religious, or public purposes and which as a matter of law or according to its articles or bylaws must, upon

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<sup>4</sup> Before it was amended in 1997, this section exempted reimbursement for travel expenses and per diem received from a *bona fide educational, academic, or charitable organization.*" (Emphasis added.)

<sup>5</sup> See also *Abt* Advice Letter, No. I-91-436 (payments an official received from the Public Affairs Council, a 501(c)(4) organization, were not exempt from the definition of income under section 82030(b)(2)).

dissolution, distribute its assets to a person or persons carrying on a charitable, religious, or public purpose or purposes *may not be formed under this part.*" (Cal. Corp. Code §7111 [emphasis added].)

Similarly, under federal tax law, the League of California Cities is not exempt from taxation under section 501(c)(3) of the Internal Revenue Code. It is a 501(c)(4) nonprofit organization. The Political Reform Act's distinction between these types of organizations in its income and travel provisions is not arbitrary. Organizations qualify for tax exempt status under Internal Revenue Code section 501(c)(3), only if they are organized and operated exclusively for charitable, religious, educational, scientific, literary, or amateur sports purposes. Internal Revenue Code section 501(c)(3) organizations are limited in their ability to make lobbying expenditures and attempt to influence legislation.

Internal Revenue Code section 501(c)(4) nonprofit organizations are civic leagues, community associations, and social welfare organizations, such as local chambers of commerce and volunteer fire departments. These organizations' political expenditures and lobbying activities are not limited in the same way that 501(c)(3) organizations' expenditures are. Most ballot measure committees and political committees are set up as 501(c)(4) organizations.

FPPC advice letters show many examples of 501(c)(4) organizations, such as:

- SANE/FREEZE, a national political organization dedicated to reducing military spending. (*Ferenbach* Advice Letter, No. A-90-105.)
- The Fallbrook Chamber of Commerce. (*Gressit* Advice Letter, No. A-94-372.)
- Capitol Network, a broad-based, nonpartisan association of government relations, administration, and legislative professionals. (*Hiltachk* Advice Letter, No. A-95-020.)
- The Committee for Citizen Action, a committee controlled by then-Senator Quentin Kopp for the sole purpose of raising funds to support or oppose state and local ballot measures. (*Kopp* Advice Letter, No. A-97-390.)
- Community Coalition Network, an organization that supports public education and informed leadership on school boards. It researches the voting records of school board candidates in 40 school districts in San Diego County and publishes the information through a direct mailing of "candidate evaluations." (*Dennis* Advice Letter, No. A-98-029(a).)
- Organization of Unified Concerned Homeowners, a Yorba Linda homeowner's association that drafted a ballot measure to stop the widening of a highway. (*Hill* Advice Letter, No. A-98-194.)

In addition to the League's policy development and educational functions, one of the most important activities of the League is its legislative advocacy efforts on behalf of cities. The League employs lobbyists who represent cities' interests in Sacramento and in Washington, D.C. As part of its grassroots lobbying efforts, the League publishes a weekly "Legislative Bulletin" during the legislative session, and mails it out to mayors and city managers, alerting them to pending issues in Sacramento. The League sends out special alerts on key legislation to elected and appointed city officials through a statewide fax system. As permitted for 501(c)(4) organizations, the League is active in lobbying on behalf of cities.

In response to your previous advice request, we further concluded that the League of California Cities was not a governmental agency. Though board members may feel like the League acts as an arm of government, or is in some ways integral to government, it is not a local government agency as defined in the Act:

"Local government agency' means a county, city or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing." (Section 82041.)

About 40 percent of the League's funding comes from dues paid by officials, and 40 percent is revenue from the educational seminars that the League offers. The League also receives revenue from publication sales and advertising in the Western Cities magazine. Although much of the League's revenue comes indirectly from cities (paying for their officials to attend League seminars), the League is not funded by government.

## **2. Exemption from Reporting for an Official's Travel to Make a Speech Within California.**

Another exception to the \$290 per year gift limit and the gift/income reporting requirements for travel payments exists for an official's travel to make a speech within California. Regulation 18950.3, titled "Travel in Connection With Speeches, Panels, and Seminars: Exception for All Filers," states:

"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." (Emphasis added.)

Under this exception, if a third party pays for an official to travel within California to make a speech, participate in a panel or seminar, *or provide a similar service*, the payment for the official's transportation, lodging, and meals is not considered a gift or income and does not have to be reported by the official.

In the present advice request, you argue that payments by the League to city officials should not be reportable under regulation 18950.3:

“... the League believes that its leadership's activities with respect to the League qualify as a ‘similar service’ to participating in a panel or debate and the League's provision of meals during these activities and reimbursement of travel expenses are not reportable.” (Advice request dated July 7, 1998, from League Executive Director Don Benninghoven to FPPC General Counsel, p. 10.)

You argue that the nature of the services provided by League board and committee members constitute a “similar service” to giving a speech within the meaning of the Commission's regulations interpreting the Act, and that therefore, the reimbursements from the League need not be included in city officials' reports of gifts and income to the Commission.

You state that the activities of the League's volunteer leadership — representing the League at events, and participating in League board and committee meetings — all share the characteristics of service, preparation, and structure. Because of this, you believe these activities constitute “similar services” to participating in a panel, debate or speech within the meaning of regulation 18950.3. You emphasize that serving in a leadership position with the League involves providing a valuable service, that the level of preparation for League board and committee meetings equals or exceeds that associated with participating on a panel, and that as directors of a nonprofit corporation, League board members assume a fiduciary responsibility under California law to perform their duties with due care and good faith. (*See* Cal. Corp. Code § 7231.)

You describe how League board meetings operate. Notice of League meetings is mailed out well in advance and directors are expected to prepare for League meetings by reviewing materials, consulting with their respective departments or divisions, and researching and evaluating the issues on the agenda, before the meetings. At League board meetings, board members typically are asked to give a brief presentation on recent developments in the League's various divisions and departments. This practice enables the board as a whole to stay apprised of statewide developments relating to cities and city staff. Board members who also serve on League committees are also frequently called upon to explain their committee's recommendations to the board. You describe how during the balance of the meeting, directors engage in lively debates on policy issues of critical concern to cities. The directors then report their decisions back to their respective divisions and departments, which begins the process of

providing feedback to the directors that they then bring to the following meeting. Directors also participate in subcommittees and report their findings or recommendations at these board meetings. Members of the board's executive committee preside or must be ready to preside throughout the two-day meeting, leading the discussion, applying the rules of order, and ensuring that all voices are heard.

You argue that the Commission's regulatory definitions of giving a speech, participating in a panel or seminar, or providing a similar service includes service on the League's board or committees.

We recognize the substantive nature of city officials' service on the League's board and committees. However, we have never construed the exception for *making a speech, participating in a panel or seminar, or providing a similar service*, to be so broad as to include serving on an organization's board of directors.

Regulation 18950.3 concerning intrastate travel by an official to make a speech, is an exception to the general rule that travel reimbursements from third parties are reportable gifts or income. As an exception to the general statutory rule, it should be construed narrowly. (*See* 58 Cal.Jur.3d Statutes, § 116 (1993 Supp.) (exceptions to the general rule of a statute are strictly construed).) Our previous advice has construed regulation 18950.3's phrase "gives a speech, participates in a panel or seminar, or provides a similar service" narrowly, never expanding it to include an official's attending a conference, or serving as a board or committee member at the meeting of an organization.

Regulation 18931.1 amplifies the definition of making a "speech." It defines a "speech" to mean a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. A "speech" does not include a comedic, dramatic, musical, or other similar artistic performance. (Regulation 18931.1.) For example, we have advised that an appearance on the Ricki Lake Show to participate in a panel discussion broadcast on television qualifies as a "speech given" by a public official. (*Manson* Advice Letter, No. A-94-308.) In the *Poole* Advice Letter, No. A-95-376, we advised that an Assembly employee's serving as mistress of ceremonies<sup>6</sup> at an NAACP awards banquet constituted a service similar to giving a speech, such that travel payments to her to attend the conference were not subject to gift limits.

We have consistently advised, however, that merely attending or being a "discussant" at a conference does not qualify as giving a speech or oral presentation as required by the regulation. (*Hoehn* Advice Letter, No. I-92-392.)

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<sup>6</sup> The Assembly employee spoke before 150-200 individuals attending the dinner; provided an introductory statement about the history of the annual dinner; announced the evening program; introduced NAACP branch officials and VIPs who were present in the audience; and announced award recipients, giving summaries of their biographies.

In the *Bogetich* Advice Letter, No. I-95-180, we advised that payments an Assembly consultant received from a high technology industry association for a three-day visit to Silicon Valley to participate in meetings and discussions would be gifts. The letter concluded that the Assembly staffer's participation in meetings and discussions did not fall within the exemption in regulation 18930.3 for "giv[ing] a speech, participat[ing] in a panel or seminar, or provid[ing] a similar service."

In the *Cochran* Advice Letter, No. A-96-015, we advised that payments a staff toxicologist at CalEPA's Department of Pesticide Regulation received from DowElanco for participating in a two-day workshop sponsored by DowElanco, were gifts and were not exempt under the exception for officials traveling to make a speech. In that case the toxicologist was to share information about his research on dietary exposure to chlorpyrifos in a series of roundtable discussions and breakout sessions, but he was not a leader or facilitator of any of the discussions. The letter concluded that "participation in a discussion group, even with advance preparation, does not constitute 'making a speech' for purposes of the travel exception in section 89506(a) and the definition in regulation 18931.1."

In the *Martinez* Advice Letter, No. A-96-198, we advised that payments to a state legislator and staff consultant from the National Conference of State Legislators ("NCSL") to attend the "Energy Institute '96," a two-day conference focusing on electric utility issues sponsored by NCSL and the federal Department of Energy, would be gifts if the source of the conference scholarships was NCSL, a non-501(c)(3) organization whose goal is to improve the effectiveness of state legislatures and represent the interests of states and state legislatures at the federal government level.

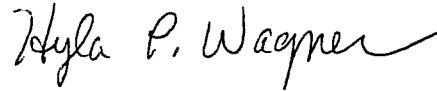
In addition, in the *Williams* Advice Letter, No. I-95-405, we advised that an "Assemblymember's holding informal meetings with constituents or a few individuals who are members of a particular group" does not constitute "giving a speech" for purposes of the reporting exemption in regulation 18950.3.

In conclusion, we reaffirm the advice given in the 1993 letter to you, that reimbursements paid by the League to city officials for travel to League events must be reported on the officials' statements of economic interests as either income or a gift.

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

Sincerely,

Steven G. Churchwell  
General Counsel



By: Hyla P. Wagner  
Staff Counsel, Legal Division

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