



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

July 23, 2002

Robert J. Spane  
Port of San Diego  
Post Office Box 120488  
San Diego, CA 92112-0488

**Re: Your Request for Advice  
Our File No. A-02-094**

Dear Mr. Spane:

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

### QUESTION

Does the income you earn speaking at the University of San Diego in its Global Leadership program and at other speaking engagements qualify as prohibited honoraria?

### CONCLUSION

Because you are under contract with the university to teach in its program, your services are provided in connection with the practices of a bona fide business, trade or profession, i.e. teaching, which is an exception to the honoraria ban. However, speaking engagements for organizations other than the university would not meet this exception, and those payments would be prohibited honoraria.

### FACTS

The San Diego Unified Port District ("Port District") is a public agency and tideland trustee organized and existing pursuant to the San Diego Unified Port District Act, which has been codified in the California Harbors and Navigation Code, Appendix 1.

---

<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

The Port District is governed by a board of port commissioners ("BPC") and has jurisdiction over tidelands surrounding San Diego Bay, submerged lands in the bay, the airport, and any other lands *acquired* by the Port District, which are held in trust for the benefit of the people of the State of California for the purposes of commerce, navigation, fisheries and recreation, as codified in the San Diego Unified Port District Act.

It has been suggested to you by the port attorney, after consultation with this agency, that your pre-existing business of motivational speaking may now be prohibited by virtue of your position as a member of the BPC.

After 33 years of service as a career Naval officer, you retired in 1996. Following your retirement from the Navy, you developed as a private business the making of speeches to various organizations for compensation. These speeches were usually about leadership, your Navy experiences and eventually your experiences in the business world. You received various sums of money as compensation for these speaking engagements, the highest being \$10,000 and the lowest being \$1,000. The compensation received from these speaking engagements has formed an important part of your post-retirement income.

Although you have been involved with various speakers' bureaus during this time, you are currently only active with one speaker's bureau and the university, although you still receive periodic calls from previous agents with whom you have worked. Over the past two years, 75% of your speaking activity has been with the University of San Diego through its Global Leadership Curriculum. The Global Leadership course is designed for active and retired military personnel working toward a Masters Degree. In the past year, you have been under contract with the university to teach one two-hour class, and are currently negotiating with the university to teach a four-hour class in the coming year.

In January 2002, you were appointed to the BPC. The position of port district commissioner is an unpaid position. As noted, your speaking business had been ongoing for several years prior to your appointment to the BPC. The information you present in your speaking engagements is unrelated to your activities as a port district commissioner. As a port district commissioner, you have full disclosure under the Port District's Conflict of Interest Code.

### ANALYSIS

Government Code § 89502(c)<sup>2</sup> provides that no member of a state board or commission shall accept any honorarium if the member would be required to report the receipt of income on his or her statement of economic interests. The term "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).) "Speech given," as used in section 89501, "means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate." (Regulation 18931.1.) As a port authority

---

<sup>2</sup> All further statutory references are to the Government Code unless otherwise specified.

commissioner with full disclosure under your agency's conflict of interest code, you are prohibited from receiving all honoraria, unless the activity falls within a specific statutory or regulatory exception to the definition of "honorarium." An exception potentially applicable to your circumstances is given at section 89501(b)(1), which provides in pertinent part:

"(b) The term 'honorarium' does not include:

"(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches."

Regulation 18932.1 (copy enclosed) explains the statutory language quoted above, providing in subsections (a) through (c) that a business, trade, or profession is presumed to be "bona fide" when certain recordkeeping criteria are met, professional licensure is held, or when an individual is employed by a college or university. However, subsection (d) provides that "[a] business whose predominant activity is making speeches is not 'bona fide' for purposes of Government Code Sections 89501 through 89506." "Predominant activity" is itself defined at regulation 18932.3. As pertinent to a business like yours, the regulation states:

"For purposes of Government Code Sections 89501 through 89506, speechmaking is presumed to be the 'predominant activity' of an individual's business, trade, or profession in the following circumstances:

"(a) For a business, trade, or profession in existence for one year or more:

"(1) During the 12-month period prior to and including the date of the speech, more than 50 percent of the hours spent on an individual's business, trade, or profession is devoted to the preparation and/or delivery of speeches; or

"(2) During the 12-month period prior to and including the date of the speech more than 50 percent of the gross income of the individual's business, trade, or profession is derived from the preparation and/or delivery of speeches."

Thus, even if your business might qualify as "bona fide" for purposes of Sections 89501 - 89506 because you have kept for two years books and records consistent with the operation of a business, and tax returns reflecting the operation of a business (reg.

18932.1(a)), regulation 18932.1(d) denies “bona fide” status to any business whose “predominant activity” is preparation and delivery of “speeches.” Your business falls into this category. However, regulation 18932 provides further exceptions to “honorarium”:

“(a) ‘Honorarium’ does not include income earned for personal services if:

“(1) The services are provided in connection with an individual’s business or the individual’s practice of or employment in a bona fide business, trade or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, pursuant to California Code of Regulations, Title 2, Sections 18932.1 through 18932.3; and

“(2) The services are customarily provided in connection with the business, trade or profession.”

Regulation 18932.2 provides:

“...[A]n individual is presumed to be engaged in the bona fide profession of teaching in any of the following circumstances:

“(a) The individual is under contract or employed to teach at a school, college, or university accredited approved or authorized as an educational institution by an agency of the State of California; or by an agency of any other state in the United States; or by an agency of the Federal government; or by a bona fide independent accrediting organization.

“(b) The individual receives payment for teaching a course, presented to assist in maintenance or improvement of professional skills or knowledge where the course provides credit toward continuing education requirements of the pertinent profession.

“(c) The individual receives payment for teaching students enrolled in an examination preparation program, such as a State Bar examination review course.”

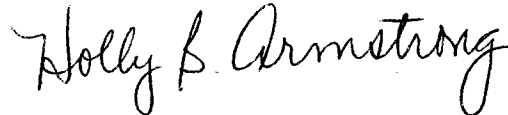
Because you are under contract to teach at an accredited university of the State of California, payments to you for “teaching” would be deemed income earned, not prohibited honoraria. However, other payments received for personal services rendered

in connection with your speaking business, unless they fall into the teaching exception as set forth in regulation 18932 would be prohibited honoraria.

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

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in black ink that reads "Holly B. Armstrong". The signature is written in a cursive style with a large, prominent "H" and "A".

By: Holly B. Armstrong  
Staff Counsel, Legal Division

Enclosure

HBA:jg

I:\AdviceLtrs\A-02-094