



FAIR POLITICAL PRACTICES COMMISSION

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December 30, 2002

Mr. George S. Fuller
2694 East Garvey Avenue, South
Suite 343
West Covina, CA 91791-2113

**Re: Your Request for Advice
Our File No. A-02-307**

Dear Mr. Fuller:

This letter is in response to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ Please note that this advice applies only to prospective conduct; the Commission does not provide advice regarding past conduct. (Regulation 18329(b)(8)(A) and (c)(4)(A).)

QUESTION

Are payments by the National Education Association and the Teachers Association of West Covina to cover airfare, hotel and conference fees for your attendance at an education conference in Colorado Springs, considered reportable gifts under the Act?

CONCLUSION

Travel costs paid by a third party generally are reportable gifts under the Act. Here, the payments do not fit in to the exception for payments provided in connection with an official's travel to make a speech. Unless the payments are made by a nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code, they will be reportable on your annual statement of economic interests and limited to \$340 per source per year in 2003.

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

FACTS

You are a member of the Governing Board of the West Covina Unified School District. You are also a member of the National Education Association and the California Teachers Association, as well as the United Teachers of Los Angeles. In addition, you are a teacher for the Los Angeles Unified School District and anticipate attending the Challenge to Change Conference, in Colorado Springs, Colorado, on March 22-25, 2003. You need clarification as to participation and fee reimbursement.

You anticipate arriving the evening of March 22 and spending the night, and remaining nights, at the Cheyenne Mountain Resort. The cost of spending the night is \$210, including conference fees. The following morning you may be invited to speak to a group of Pasadena Unified School District board members and district employees. The topic of the talk would be to describe your experiences as a board member concerning the Challenge of Change concept. You would be in the room for approximately one hour and your talk would be approximately ten minutes, on an informal basis.

It should also be noted that you would not be attending the conference specifically for the purpose of addressing the Pasadena group. You would not be listed on a program, and no decision to invite you to speak to the group would be made until Sunday morning.

The National Education Association ("NEA") would pay your airfare, in the sum of \$308. Your hotel accommodations and conference fees would be paid by the Teachers Association of West Covina ("TAWC"). Your total hotel and conference fee bill is anticipated to be \$658.

ANALYSIS

You are a member of the Governing Board of the West Covina Unified School District, and as such are subject to the gift limits and prohibition on receipt of honoraria contained in sections 89503 and 89502 of the Act. The Act requires that public officials report income and gifts on their statements of economic interests (sections 87200-87313), limits gifts to \$340² per calendar year from a single source (section 89503), and prohibits the receipt of honoraria (section 89502).³ The Act defines "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" (Section 82028.) In general, payments by a third party

² The gift limit is increasing based on the annual cost-of-living adjustment from \$320 in 2002 to \$340 in 2003.

³ Section 89502 of the Act prohibits state and local elected officials from accepting any honorarium. Section 89501(a) defines "honorarium" to mean "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." The payments from the NEA and TWAC for your airfare, hotel, and registration fee to attend the education conference in Colorado Springs do not constitute prohibited honoraria under the Act, because they are not payments made in consideration for your giving a speech or attending an event, they are reimbursement for your airfare and accommodations. Subdivision(c) of section 89501 states that "[s]ection 89506 shall apply to all payments, advances, or reimbursements for travel and related lodging and subsistence."

for a public official's travel are considered a gift, subject to the \$340 per year gift limit and must be reported by the official on his or her statement of economic interests.

Several exceptions to this rule exist for travel in connection with giving a speech, and travel paid for by a government or a nonprofit charitable 501(c)(3) organization. Your proposed travel is outside California, but within the United States. Therefore, we examine whether the exceptions in section 89506 and regulation 18950.1 apply to the travel payments you might receive from the NEA and the TAWC.

Section 89506 provides as follows:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

(b) Gifts of travel not described in subdivision (a) are subject to the limits in Section 89503.

(c) Subdivision (a) applies only to travel that is reported on the recipient's statement of economic interests.”

These exceptions are essentially restated in regulation 18950.1, as follows:

“The following provisions shall apply to payments made for travel pursuant to Government Code Sections 89501 through 89506:

(a) Travel In Connection With Speeches, Panels, and Seminars.

¶ . . . ¶

“(2) A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or

limitations on honoraria and gifts specified in Government Code Sections 89501, 89502, or 89503 if:

(A) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, and

(B) The travel, including actual transportation and related lodging and subsistence, is in connection with a speech given by the official or candidate; the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech; and the travel is within the United States.

Except as otherwise provided by California Code of Regulations, Title 2, Section 18950.3, any payment made for travel specified in this subdivision (a)(2), shall be reported in accordance with Government Code Section 87207(c).

(b) Travel Provided By Governmental Entity or Charity. A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Government Code Sections 89501, 89502, or 89503 if:

(1) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and

(2) The payment is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, defined in Section 203 of the Revenue and Taxation Code, or by a nonprofit-organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person that is domiciled outside the United States and that substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

Except as provided by California Code of Regulations, Title 2, Section 18950.3, any payment made for transportation, lodging, and subsistence, specified by subdivision (b), shall be reported in accordance with Government Code Section 87207(c).”

Under section 89506(a)(1) and regulation 18950.1(a)(2), travel within the United States by a local elected official, that is reasonably related to a legislative or governmental purpose or an issue of public policy, and is in connection with a speech given by the official, is reportable on the official’s statement of economic interests, but not subject to the \$340 per source gift limit.

With respect to the Challenge to Change education conference in Colorado Springs, you have stated that you may make some informal remarks to a subgroup of conference attendees. The question raised is whether this constitutes a “speech given” within the meaning of section 89506(a)(1). Regulation 18931.1 defines “speech given” as follows:

“For purposes of Government Code Sections 89501 through 89506, ‘speech given’ means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. A ‘speech given’ does not include a comedic, dramatic, musical, or other similar artistic performance.”

In the past, 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.) However, merely 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.) Similarly, 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 exception. (*Williams* Advice Letter, No. I-95-405.)

You state that on Sunday morning of the conference, you may be invited to speak to a group of Pasadena Unified School District board members and district employees. The topic of the talk would be to describe your experiences as a board member concerning the Challenge of Change concept. You state that you would be in the room for approximately one hour and your talk would be approximately ten minutes, on an informal basis. You note that you would not be attending the conference specifically for the purpose of addressing the Pasadena group. You further note that you would not be listed on a program, and no decision to invite you to speak to the group would be made until Sunday morning.

Your possible remarks to district board members and employees are more in the nature of informal remarks or participating in a discussion, rather than a speech, for purposes of the exception. You are not on the program and do not know if you will be asked to speak until the day of the conference itself. In this case, such remarks, if made, do not constitute “giving a speech” for purposes of regulation 18931.1 and section 89506(a)(1).⁴

We next turn to section 89506(a)(2) and regulation 18950.1(b), and examine whether the payments for travel will be provided by a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code. This exemption does not apply to payments made by all nonprofit organizations, but only to payments made by charitable nonprofit organizations that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code.

Your incoming letter did not indicate what type of nonprofit organizations the NEA and TWAC are. However, most professional organizations and unions are not

⁴ Since we have concluded that making informal remarks to a group at the conference does not constitute giving a speech under the Act, and because your travel is outside California, the exception for intrastate travel and conferences in regulation 18950.3 also does not apply to you.

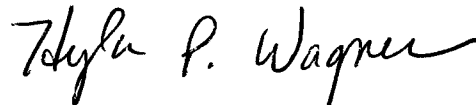
nonprofit charitable organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code. They are more likely to be set up as 501(c)(5) organizations.

Accordingly, unless the payments are from 501(c)(3) organizations, you must report the payments for travel you receive from the NEA and TWAC on your statement of economic interests (Form 700) and the payments are limited to \$340 per source per year.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Hyla P. Wagner
Senior Counsel, Legal Division

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