



FAIR POLITICAL PRACTICES COMMISSION

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June 16, 2003

Helene Leichter, City Attorney
City of Morgan Hill
City Attorney's Office
17555 Peak Avenue
Morgan Hills, CA 95037-4128

Re: Your Request for Advice
Our File No. A-03-064

Dear Ms. Leichter:

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

QUESTION

Are payments of travel received by Councilmember Carr in order to participate in the Young Elected Leaders Project of the Eagleton Institute of Politics at Rutgers University reportable?

CONCLUSION

Yes. Travel payments made to Councilmember Carr from Rutgers University are reportable as a gift although not subject to the gift limit or honoraria prohibition provided these payments are governed by section 89506(b) as discussed below.

FACTS

Councilmember Larry Carr was invited to attend a conference of the Eagleton Institute of Politics at Rutgers University in New Jersey in mid-May. The conference focused on leadership issues and civic engagement, and fifty politicians age thirty-five and younger were invited to attend. Councilmember Carr was not to give a speech or

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

participate in a panel of speakers, but was to participate in group discussion on various issues.

The conference was the culmination of the Eagleton Institute's eighteen-month Young Elected Leaders Project. Funded by a grant from the Pew Charitable Trusts, the project aims to understand the distinctive experiences of young elected officials and learn from them about how to engage other young people in our nation's civic life. Councilmember Carr was one of hundreds of elected officials age 35 or younger who participated in a survey of young leaders holding office at federal, state, and municipal levels and was selected to participate in the conference portion of the project.

As the project, including the conference, is sponsored by a grant from the Pew Charitable Trusts, all travel expenses, meals and accommodations were paid by the grant proceeds. Councilmember Carr has asked whether payment of the expenses is subject to the Political Reform Act's reporting requirements.

ANALYSIS

As a member of the City Council of Morgan Hill, Larry Carr is a public official subject to the gift provisions of the Act. A "gift" is defined as "any payment² that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received...." (Section 82028.) The Act requires that public officials report gifts on their statements of economic interests and limits certain gifts to \$340 in a calendar year. (Sections 87200-87313; regulation 18940.2.)

Section 89506 provides, among other things, that payments, advances, or reimbursements, for travel reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited if either the travel is in connection with a speech given or the travel is provided by a governmental agency or a bona fide nonprofit, 501(c)(3) organization, or an educational institution. (Section 89506(a).)

In particular, this section provides:

“(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:

¶...¶

(2) The travel is provided by a government, a governmental agency, a foreign government, a

² “‘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.)

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....” (Section 89506(b).)

Regulation 18950.1(b) further specifies:

“(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).”

Payments governed by provisions of section 89506(a)(2) and regulation 18950.1(b) are not subject to the gift limit but must be reported with the source of the gift being identified.

Source of Gift

Regulation 18945(a)(1) provides rules for determining the source of a gift:

“(a) General Rule. A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.

(1) If a person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials, the person is the source of the gift to the official or officials.”

Your question pertains to a project of Rutgers University, an educational institution where the project is funded by a grant from the Pew Charitable Trusts. In the situation you have presented, because the determination that Councilmember Carr be selected to attend and participate in the Eagleton Institute’s Young Elected Leaders Project was made by representatives of Rutgers University, the university directed and controlled the payments of travel. Consequently, the Pew Charitable Trusts cannot be viewed as the source of those payments under regulation 18945(a)(1). Instead, Rutgers University is the source of the gift. (See *Summersett* Advice Letter, No. A-00-087, where it was concluded that a nonprofit organization administering a scholarship program was the true source of gifts/scholarships to officials rather than the vendors who donated to the scholarship program but had no knowledge of which officials would be selected for scholarships.)

Section 89506(b)’s Exemption

We must then analyze whether these travel payments are governed by section 89506(b) and regulation 18950.1(b), cited above. Based on the information that the Young Elected Leaders Project is designed to study the nation’s civic life, we find that travel by Councilmember Carr to participate in this project is “reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy.” Therefore, subdivision (b)(1) of regulation 18950.1 above is met. Finally, assuming that the university meets the criteria of subdivision (b)(2) of regulation 18950.1, the payments of travel received by Councilmember Carr are not subject to the gift limit but are reportable and must be disclosed on the council member’s next mandatory statement of economic interests.

Thus, if payments by Rutgers University for Councilmember Carr’s travel are exempted pursuant to section 89506(b), these payments are considered a gift and must be reported by him.

Honoraria Provisions

In addition, please note that section 89502(a) provides, in part, that no elected officer of a local government agency shall accept any honorarium. An honorarium means 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).)

The prohibition on receiving honoraria includes several exceptions. (Section 89501; Regulation 18932.5; *Swanson* Advice Letter, No. I-98-169.) Regulation 18932.4(g), for example, states that any payment made for transportation, lodging and

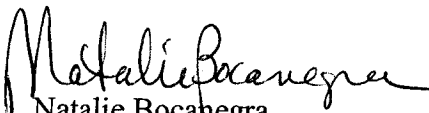
subsistence that is exempted from prohibitions on honoraria by section 89506 and regulations 18950, *et seq*, is not an honorarium.

Assuming the travel payments received by the councilmember are governed by section 89506 and regulation 18950.1(b) as discussed above, the payments are not honoraria subject to the honoraria prohibition.

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

Sincerely,

Luisa Menchaca
General Counsel

By: 
Natalie Bocanegra
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