



## FAIR POLITICAL PRACTICES COMMISSION

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March 5, 2004

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Department of Industrial Relations  
Division of Workers' Compensation  
Medical Unit  
Post Office Box 8888  
San Francisco, California 94128

**Re: Your Request for Advice  
Our File No. A-04-011**

Dear Dr. McKenzie:

This letter is in response to your request for advice regarding the honoraria provisions of the Political Reform Act (the "Act").<sup>1</sup> Nothing in this letter should be construed to evaluate any conduct that has already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTIONS

(1) May employees of the Workers' Compensation Medical Unit who serve as speakers in continuing education programs accept reimbursement from course providers for expenses such as travel, lodging, and appropriate meals?

(2) May employees of the Workers' Compensation Medical Unit who approve course providers for continuing education programs also serve as speakers and accept reimbursement from these course providers for expenses such as travel, lodging, and appropriate meals?

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations. All references herein are to the Government Code unless otherwise indicated.

## CONCLUSION

(1). Yes. The honoraria prohibition does not apply to actual intrastate transportation and any necessary lodging and subsistence expenses provided directly in connection with a speech or participation in a panel or seminar.

(2). Yes. Actual intrastate transportation and any necessary lodging and subsistence expenses provided directly in connection with a speech or participation in a panel or seminar are not income or gifts to the recipient and, therefore, do not qualify as an economic interest which could present a potential conflict of interest.

## FACTS

You are a staff physician with the Division of Workers' Compensation Medical Unit ("DWC") in the Department of Industrial Relations. One of the division's mandates is to oversee the qualified medical evaluator program in which the division accredits physicians to perform medical-legal evaluations in the workers' compensation system. As part of that program, the division also approves providers of courses which these physicians must take in order to fulfill their continuing educational requirements mandated by the Labor Code.

Members of the DWC staff are occasionally asked to serve as speakers in these continuing educational programs. There is a significant advantage to the system in having DWC staff speak since staff can provide first-hand knowledge as to how the department's programs are administered. The courses are given in California.

## ANALYSIS

### QUESTION NO. 1 HONORARIUM

The DWC is an agency within the meaning of section 82003. For purposes of this analysis, it is assumed that the employees who may be called upon to serve as speakers in the above mentioned continuing educational programs are "designated employees" as defined in section 82019.

Section 89502(c) states that no designated employee of an "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." Section 89501(a) defines honorarium 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."

However, Title 2, Division 6, California Code of Regulations<sup>2</sup> section 18932.4(e) states that "honorarium" does not include "actual intrastate transportation and any necessary lodging and subsistence provided directly in connection" with an event in which the employee gives a speech or participates in a panel or seminar. Additionally, these items are not payments and need not be reported by the employee.

Similar provisions are found in regulation 18942(a)(11) exempting such travel expenses from the gift provisions of the Act and regulation 18950.1(a) and 18950.3 with regard to payments made for travel purposes.

Accordingly, payment of actual and necessary travel expenses to employees who participate as speakers at continuing educational courses in California is not prohibited by the provisions of the Act banning honoraria. Likewise, such travel expenses are not gifts, and are therefore not subject to the gift limits imposed by the Act.

## **QUESTION NO. 2 CONFLICT OF INTEREST**

Your second question implicitly asks whether or not employees responsible for approving course providers for continuing educational credits may also take part as speakers in the courses presented by the course providers they approve without violating the conflict-of-interest provisions of the Act.

The Act's conflict-of-interest provisions ensure that public officials "will perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them." (Section 81001(b).) Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

The Commission has adopted an eight-step standard analysis for deciding whether an official has a disqualifying conflict of interest. (Regulation 18700.) The general rule, however, is that a conflict of interest exists whenever a public official makes, participates in making, or otherwise uses his or her official position to influence a governmental decision which has a reasonably foreseeable material financial effect on one or more of his or her financial interests.

### **STEP 1 PUBLIC OFFICIAL**

Employees of DWC are public officials within the meaning of section 82048. Consequently, an employee may not make, participate in making, or otherwise use his or her official position to influence any decision that will have a reasonably foreseeable material financial effect on any economic interest he or she may have.

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<sup>2</sup> All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

**STEP 2****MAKING, PARTICIPATING IN, OR INFLUENCING A GOVERNMENTAL DECISION**

A public official “makes a governmental decision” when the official, acting within the authority of his or her office or position: obligates his or her agency to any course of action, enters into any contractual agreement on behalf of his or her agency, or determines not to act, unless such determination is made because of his or her financial interest (Regulation 18702.1 (a).) Under the facts presented, the governmental decision herein is whether or not to approve applicants as course providers for continuing education under DWC’s program.<sup>3</sup>

**STEP 3****POTENTIALLY DISQUALIFYING ECONOMIC INTERESTS**

Since this question involves a determination of whether or not the travel expenses constitute an economic interest, we will proceed directly to the third step of the analysis.

Section 87103 states that “[a] public official has a financial interest... if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official, a member of his or her immediate family,” or on any economic interest. The economic interests relevant to your inquiry are:<sup>4</sup>

“(c) Any source of income ... aggregating five hundred dollars (\$500) or more... received by, the public official within 12 months prior to the time when the decision is made.

¶...¶

“(e) Any donor of ... a gift or gifts aggregating three hundred forty dollars (\$340) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.”

Section 82030 defines “income” as “a *payment* received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer ....” (Emphasis added.)

Section 82028(a) 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 .... Any person ... who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.”

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<sup>3</sup> Please note, an official with a financial interest in a decision must also refrain from participating in making or influencing the decision (regulations 18702.2, 18702.3).

<sup>4</sup> Under the facts presented to us, these are the only potentially disqualifying economic interests, and this analysis assumes there are no other economic interests involved.

However, regulation 18942 provides certain exceptions to the definition of gift. Nothing delineated below is considered a gift, nor is it subject to any limitation on gifts:

“(11) 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. The items are not *payments* and need not be reported by any filer.” (Emphasis added.)

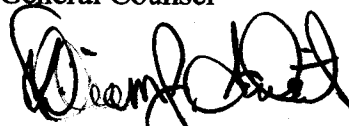
Similarly, regulations 18950.1 and 18950.3 provide the same exception to payments made for travel purposes. Since the above language provides that these reimbursements are not “payments,” we have advised that they are neither income, nor gifts, under the Act. (*Kintner* Advice Letter, I-03-101; *Benninghoven* Advice Letter, I-98-177).

Therefore, since the employees referred to in your second question are receiving neither gifts nor income by collecting travel expenses, they have no economic interest which could create a conflict of interest under the Act.

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

Sincerely,

Luisa Menchaca  
General Counsel



By: William D. Lenkeit  
Counsel, Legal Division

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