



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

July 16, 2008

John Garamendi
Lieutenant Governor
State Capitol, Room 1114
Sacramento, California 95814

Re: Your Request for Informal Assistance
Our File No. I-08-089

Dear Mr. Garamendi:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the "Act")¹ and is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your letter seeks general information, we are only able to provide you informal assistance.²

Additionally, our advice is limited to obligations arising under the Act. Because Government Code Section 8920 is not within the provisions of the Act, we are unable to provide you with an analysis of the potential applicability of that section to your question. We therefore urge you to seek advice from legal counsel regarding that issue.

QUESTION

Are there any provisions under the Political Reform Act that would prohibit or restrict the placement of fellows by The California Council on Science and Technology (CCST) in legislative offices and committees where CCST would pay the fellows a stipend and their work would be supervised by the legislators?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed).

CONCLUSION

No. However, any legislator who receives the services provided by a CCST fellow shall report the payment, as described below, within 30 days after the fellow receives \$5,000 in any calendar year.

FACTS

Twenty years ago, you authored legislation forming a California Council on Science and Technology (CCST). The mission of this entity, composed of leading scientists from California's research and educational institutions, is to provide scientific advice to the legislature and the executive branch on policy matters concerning some of California's most important challenges: water, transportation, and the environment, among others.

According to information you have provided from CCST, the organization "is a nonpartisan, not-for-profit 501(c)(3) corporation. The state legislature requested its creation to offer expert advice and recommendations to state government on science and technology related public policy issues. CCST is governed by a Board of Directors [composed] of representatives from its sponsoring academic institutions and the corporate and business communities."

"CCST has proposed to provide Science and Technology Fellows to the State Assembly and the State Senate for one year of service in legislative offices or committees at no cost to the Legislature.... The Fellows stipend is proposed to be provided by CCST."

"The proposed Fellowship program will be the first state program in the nation that places Ph.D. level (or equivalent) scientists and engineers in a formal fellowship program in a state legislature. It is modeled after the 35-year -old Congressional S&T Fellows Program administered by the American Association for the Advancement of Science. The five-year pilot program, planned to begin in the fall of 2009, proposes to place ten fellows per year for one-year appointments either as staff members of individual legislators or in committees of the Assembly and Senate. Through the fellows program, the California state legislators will have access to staff members with strong science and engineering training who can provide valuable research and analysis to inform legislation, including but not limited to bills with science and technology components."

"CCST was established at the request of the State Legislature to provide science and technology policy advice to the Legislature. Fellows selected by CCST through a rigorous, objective process will be paid stipends by CCST, but they would be directly supervised by the legislator or committee in whose office they are placed."

CCST is currently nearly ready to begin a fellowship program that will provide fellows to serve as advisors to legislative offices at no expense to the state. Unfortunately, CCST has been informed that by hosting a staff member who is paid by a non-state entity, legislators may run afoul of state law. You request that the Commission review the attached program and determine whether the program, as described, would violate Government Code Section 8920 or other state law.

ANALYSIS

Because the Commission does not have jurisdiction over Government Code Section 8920, we are unable to provide you with an analysis of that issue. We suggest that you seek advice from your legal counsel, the Attorney General's office, or from the respective ethics committees of the Senate and Assembly.

There are two issues that arise under the Political Reform Act with respect to the factual situation presented. The first issue is whether or not providing fellows to the Legislature under this program would be considered a gift either to the agency or to its members. Section 82028 defines "gift" as:

"Gift" means, ..., any payment that confers a personal benefit on the recipient..."

Under the factual situation presented, we do not believe that a personal benefit is being conferred on any member of the Legislature under this program. Accordingly, the use of any fellows supplied to the Legislature by CCST does not constitute a gift to any legislator.

The second issue implicates the provisions defining a "contribution" under Section 82015(b)(2) and concerning "behested payments." A payment³ is "made at the behest" of a candidate if it is made "under the control or at the direction of, in cooperation, consultation, coordination, or in concert with, at the request or suggestion of, or with the express, prior consent of..." (Regulation 18225.7) Accordingly, these "payments" fall within the definition of a behested payment.

Payments made at the behest of a candidate are considered contributions to the candidate unless the payment is made for consideration or it is clear from the surrounding circumstance that the payment was made for purposes unrelated to the candidate's candidacy. (Section 82015(b)(2)(A) & (B)). A payment, such as the type here, that is made principally for legislative, governmental, or charitable purposes are presumed to be for purposes unrelated to a candidate's candidacy for elective office and are, therefore, not contributions under the Act. However,

³ A "payment" includes any "distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible." (Section 82044.) The services provided under the fellows program would meet that definition.

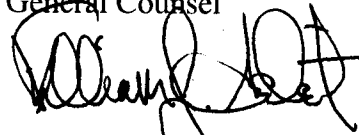
“payments of this type that are made at the behest of a candidate who is an elected officer *shall be reported within 30 days following the date on which the payment or payments equal or exceed . . . (\$5,000) in the aggregate from the same source in the same calendar year in which they were made.*” (Section 82015(b)(2)(B)(iii), emphasis added.)

Accordingly, once a fellow meets the \$5,000 threshold in any one year, the legislator to whom the fellow is assigned must report the payment within 30 days.⁴

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

Sincerely,

Scott Hallabrin
General Counsel



By: William J. Lenkeit
Senior Counsel, Legal Division

WL:jgl

Enclosure

⁴ The report of the payment must be filed with the elected officer's agency and is a public record subject to inspection and copying under Section 81008(a). The report must contain the name of the payor, address of the payor, amount of the payment, date of the payment, name and address of the payee, brief description of the services provided, and a description of the purpose for which the payments were made. (Section 82015(b)(2)(B)(iii).