



FAIR POLITICAL PRACTICES COMMISSION

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May 7, 2009

Ted A. Gaebler
City Manager
City of Rancho Cordova
2729 Prospect Park Drive
Rancho Cordova, California 95876

Re: Your Request for Advice
Our File No. A-09-097

Dear Mr. Gaebler:

This letter is in response to your request for advice regarding the honorarium provisions of the Political Reform Act (the "Act").¹ Please note, the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A), copy enclosed.) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTION

May you accept payments for speaking engagements as part of your speaking engagement business now that you have become the City Manager of the City of Rancho Cordova?

CONCLUSION

You may not accept payments for speaking engagements without violating the Act's prohibition on receiving honoraria. The exception for earned income for personal services which are customarily provided in connection with a bona fide business, trade or profession does not apply to you because the sole or predominant activity of your

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.

business, trade, or profession is making speeches.

FACTS

You have been the City Manager for the City of Rancho Cordova since October 2003. From 1986 to 2001, you owned a company whose primary business consisted of providing speaking engagements around the world. Because you authored a book that became an international best seller, you continue to receive invitations to speak to groups of business associations, government officials and employees both within and outside of California. Your written employment agreement with the City of Rancho Cordova permits you to engage in "independent acts or other forms of enterprise during those hours not covered by active City employment, providing such acts do not constitute a conflict of interest as defined herein." The agreement further provides that you are subject to the conflict-of-interest provisions of the California Government Code and that you must submit to the city clerk the "appropriate Conflict of Interests Statements at the time of appointment, annually thereafter, and at the time of separation from the position." You wish to continue receiving payment for speeches based on your understanding that your employment agreement does not prohibit this activity and that, because you are a professional speaker, these payments are income and not prohibited honoraria.

ANALYSIS

Section 89502(a) provides that "no elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium." Because city manager is a position listed in Section 87200, you may not accept any honorarium.

Section 89501 defines the term "honorarium," in pertinent part, as follows:

"(a) For purposes of this chapter, 'honorarium' means, except as provided in subdivision (b), 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.

"(b) The Commission shall adopt regulations to implement this subdivision."

Section 89501(b)(1) exempts from the definition of "honorarium" earned income in connection with a bona fide business, trade, or profession, but specifically states that this exemption does not apply when the "sole or predominant activity of the business, trade, or profession is making speeches."

Furthermore, interpreting Section 89501(b)(1), Regulation 18932 provides:

“(a) ‘Honorarium’ does not include income earned from 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 [Regulations 18932.1 through 18932.3]; and

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

Regulation 18932.1(d) states that “a business whose predominant activity is making speeches is not ‘bona fide’ for purposes of [Section 89501 through 89506].”

If you give speeches in connection with a “business” from which you receive income, Regulation 18932.1(d) bars you from receiving these payments because you would be receiving the payments for providing services as a speaker for a business whose “predominant activity is making speeches.” If no “business entity” is involved, the payments fall directly within the prohibition of Section 89501 against receiving an honorarium.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Valentina Joyce
Counsel, Legal Division

VJ:rb