



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 15, 2016

Ronald J. Powell, PhD
13478 Delaware Road
Apple Valley, CA 92308

Re: Your Request for Advice
Our File No. A-16-036

Dear Dr. Powell:

This letter responds to your request for advice regarding the honorarium provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when rendering advice. (*In re Oglesby* (1975), 1 FPPC Ops. 71.)

QUESTIONS

Does the Act's prohibition on a designated employee's acceptance of honoraria prohibit you from accepting payment for giving a speech, conducting a training, publishing an article, or authoring a book in connection with your consulting business specializing in the mental health needs of children under the age of five?

CONCLUSION

No. You may accept payment for giving a speech (including conducting trainings) or publishing an article in connection with your consulting business because it is a bona fide business. You may accept payment for authoring a book because doing so does not fall within the scope of the prohibition on the acceptance of honoraria.

FACTS

You are a retired educator with unique expertise in early childhood mental health, a Commissioner for the County of San Bernardino's Children and Families Commission ("First 5 San Bernardino"), and the owner and operator of a consulting business that consults on early childhood mental health services, educational implications of early life trauma, and early education behavioral management. Prior to your retirement, you enjoyed a 40-year career in public education. You earned a teaching credential, and numerous other certificates and credentials relating to your expertise throughout your career.

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.

Prior to further advancing our primary analysis, we first address two threshold issues: whether conducting a training would constitute a “speech given,” and whether a book is an “article,” for purposes of the Act’s prohibition on the acceptance of honoraria.

Regulation 18931.1 defines a “speech given” as “a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate.” Therefore, conducting a training is a “speech given” because doing so is a form of oral presentation.

A book is not an “article” because Regulation 18931.2(c) provides that an “Article” does not include books, plays, or screenplays.” Thus, Section 89502(c) may prohibit you from conducting trainings for payment but not from authoring a book for payment.

Returning now to our primary analysis, Section 89501(b) further defines “honorarium,” in pertinent part, as follows:

“(b) The term ‘honorarium’ does not include:

“(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches. The Commission shall adopt regulations to implement this subdivision.”

Interpreting Section 89501(b)(1), Regulation 18932(a) provides as follows:

“(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.”

Thus, personal services provided by an individual in connection with that individual’s bona fide business are not included within the Act’s definition of an honorarium.

Regulation 18932.1(b) sets forth the test for determining when an individual’s business that has been in existence for less than two calendar years is “bona fide” and provides as follows:

“(b) For purposes of Government Code Sections 89501 through 89506, a business that has been in existence for less than two calendar years is presumed to be “bona fide” if:

“(1) Its owner has maintained records of income and expenses, consistent with the operation of a business, from the date of inception of the claimed business; and,

“(2) Any three of the following are maintained:

“(A) Copies of tax returns filed in connection with the operation of the claimed business for one year;

“(B) Records of bank accounts or lines of credit in the name of the business;

“(C) Records of purchase, lease, or rental of equipment and supplies for use solely by the business;

“(D) Records of expenditures for rent, wages, business or professional insurance, or other similar, customary costs of doing business;

“(E) Records of efforts to market good or services provided by the business; or

“(F) Documentation of expertise by the business operator in connection with the service provided or product sold by the business.”

Thus, your consulting business that has been in business for less than two years is “bona fide” if you have maintained records of income and expenses consistent with the operation of a business since the inception of the business and if you have maintained specified other records.

You opened your consulting business on February 5, 2015, and it has been in existence for over one year. You have maintained records of the business’s income and expenses since its inception. You have also maintained: (A) copies of tax returns filed in connection with the business; (B) records of bank accounts in the name of the business (the business has not taken out any lines of credit); (C) records of equipment and supplies purchased solely for the use of the business (the business has not rented or leased any equipment or supplies); (D) records of business insurance and other customary costs of doing business (the business did not rent any real property or pay wages); (E) records of your efforts to market the business’s services; and (F) documentation of your expertise in connection with the business’s services, including your teaching credential and numerous certificates and credentials relating to your expertise earned throughout your career. Therefore, we find that your business has maintained the records necessary for a business in business less than two years to be a bona fide business under Regulation 18932.1(b).²

Despite meeting the requirements of Regulation 18932.1(b), a business is not a “bona fide business” if speechmaking is its sole or predominant activity. Regulation 18932.3(a) provides that the “predominant activity” of a business in existence for one year or more is presumed to be speechmaking if during the 12-month period prior to and including the date of the speech, more

² We recommend that you continue to maintain the requisite records under Regulation 18932.1 to preserve your business’s status as a bona fide business.

than 50 percent of the hours spent on the business is devoted to, or more than 50 percent of the gross income of the business is derived from, the preparation and/or delivery of speeches.

You have advised that less than 50 percent of the hours spent on your consulting business is devoted to, and less than 50 percent of its gross income is derived from, the preparation and/or delivery of speeches. Aside from preparing for and delivering speeches, your business also provides consulting services, analyzes the performance of programs, and authors written work regarding early childhood mental health. Accordingly, we find that speechmaking currently is not the predominant activity of your business.³

We conclude that the Act's prohibition on the acceptance of honoraria does not prohibit you from giving a speech, conducting a training, or publishing an article for payment in connection with your consulting business because it is a bona fide business. You may accept payment for authoring a book because doing so does not fall within the scope of the prohibition.

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

Sincerely,

Hyla P. Wagner
General Counsel



By: Matthew F. Christy
Counsel, Legal Division

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³ We also recommend that you continue to monitor the hours spent on the business that are devoted to, and the business's gross income that is derived from, the preparation and/or delivery of speeches to ensure your business avoids the application of this presumption.