



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

March 21, 2017

Blanca E. Castro
Sacramento Metro Manager
AARP California
1415 L Street, Suite 960
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-17-063

Dear Ms. Castro:

This letter responds to your request for advice on behalf of the American Association of Retired Persons (“AARP”) regarding the gift-limit provisions of the Political Reform Act (the “Act”).¹ While generally, the burden of complying with the gift limits of the Act is placed on the public official, the donor also has duties under the Act and is subject to liability under Section 89521 for the making of a gift in violation of the gift limits. Thus, we are providing advice concerning your duties and those of the AARP.

Please note that we are only providing advice under the provisions of the Act and not under other general ethics rules that are not in the Act.

QUESTION

What limits apply to AARP in paying travel and lodging expenses for a local elected official to attend a conference at which he will be a keynote speaker?

CONCLUSION

Travel and lodging payments are generally considered a gift; and as such are subject to the \$470 gift limit, reporting by the official, and potentially pose a conflict of interest for the official should AARP ever be financially affected by a decision before the official. Under your facts, the exception in Section 89506 applies for travel payments in connection with a speech given by a local elected officeholder, and these payments will not be subject to the gift limit.

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.

FACTS

AARP, a non-profit, nonpartisan organization, is hosting a conference in the Los Angeles metro area on April 25th and 26th regarding “Age Friendly Communities and what different local jurisdictions are doing across the state to prepare for a growing aging population.”

The keynote speaker for this conference is the Mayor from the City of West Sacramento. You wish to pay for his travel to Los Angeles and lodging while at the conference.

ANALYSIS

Generally, a gift is defined under Section 82028(a) as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

To reduce improper influences on public officials, the Act regulates the making² and receipt of gifts by local public officials in three ways:

- First, the Act places limitations on gifts to certain public officials. The current limit is \$470 from a single source in a calendar year. (Section 89503.)
- Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift of \$50 or more (or gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interests. (Sections 87200-87314.)
- Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$470 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 and 87103(e).)

In addition, Section 89502(c) provides that “no designated employee of a state or local government 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” and provides 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.” However, pursuant to Section 89501(c), all travel and related lodging and subsistence payments are governed by Section 89506.

² As noted above, Section 89521 provides: “Any person who *makes* or receives an honorarium, gift, or expenditure in violation of this chapter is liable in a civil action brought by the Commission for an amount of up to three times the amount of the unlawful honorarium, gift, or expenditure.” [Emphasis added.]

Travel Expenses

Under the Act, travel is generally presumed to confer some personal benefit on a public official. Consequently, travel costs paid for by a third party generally are reportable gifts under the Act. Therefore, absent an exception, the value of all travel-related expenses will be considered a reportable gift. (Section 82028.) Section 89506 provides that under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's current \$470 gift limit. Section 89506(a) provides in pertinent part:

“(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:

“(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elective state office or local elective office, . . . the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.

According to your facts, you wish to pay the cost of transportation and lodging for the Mayor of West Sacramento, the keynote speaker at your conference “Age Friendly Communities and what different local jurisdictions are doing across the state to prepare for a growing aging population.” The payments would be reasonably related to a legislative or governmental purpose, and to an issue of state, national, or international public policy. Thus, you may provide actual transportation costs and for the Mayor and his lodging and subsistence expenses, limited to the day immediately preceding, the day of, and the day immediately following the speech, without being subject to the \$470 gift limit.

Please note, however:

(1) The entire payment will still be reportable and potentially the basis for a conflict of interest for the official in governmental decisions affecting AARP for 12 months following the making and receipt of the gift.

(2) Any payments made in connection with the conference for items other than travel and related lodging and subsistence will be considered a reportable gift subject to the \$470 gift limit and the conflict of interest provisions of the Act.

Nonprofits that Regularly Host Travel for Elected Officials

Finally, please be aware that Section 89506(f), a recent statute effective January 1, 2016, provides that a 501(c)(3) or 501(c)(4) nonprofit organization that “regularly organizes and hosts travel for elected officials” and makes a threshold amount of travel payments must disclose certain

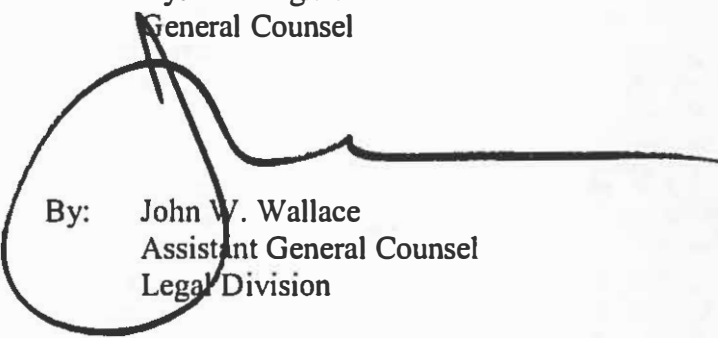
donors to the organization. The statute provides that an organization “regularly organizes and hosts travel for elected officials” if the organization’s expenses relating to travel, study tours, or conferences for elected officials is greater than one-third of its total expenses reflected on its IRS Form 990 for the last 12 months.

If you believe the above provision applies to your organization, please contact us for further advice.

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

Sincerely,

Hyla P. Wagner
General Counsel



By: John W. Wallace
Assistant General Counsel
Legal Division

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