



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

July 5, 2017

D. Wayne Leech, Esq.
11001 East Valley Mall, Suite 200
Chase Bank Building
El Monte, CA 91731

Re: Your Request for Advice
Our File No. A-17-163

Dear Mr. Leech:

This letter responds to your request for advice on behalf of Glendora City Councilmember Michael Allawos regarding his duties under the honoraria provisions of the Political Reform Act (the "Act").¹

Please note that we are only providing advice under the provisions of the Act and not under other local or state ethics provisions such as the doctrine of incompatible activities of local officers and employees (Section 1125 et seq.).

QUESTION

May Councilmember Allawos receive payment in consideration for a speech given (or other form of oral presentation), article published, or attendance at any public or private conference, meeting, or like gathering in connection with his business, Allawos & Company, LLC ("the LLC")?

CONCLUSION

Based on your facts, the Act does not prohibit the Councilmember from continuing the activities you describe in connection with his consulting business and receiving payment for these services. The payments for these activities are earned income for personal services, which is customarily provided in connection with the practice of a bona fide business.

FACTS

You are the City Attorney for the City of Glendora. In March, 2017, Councilmember Allawos was elected to the Glendora City Council for the first time. Councilmember Allawos is the

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.

owner and managing member of the LLC, which was registered in California on November 15, 2011. The LLC provides corporate and business management consulting services.

According to the website, the LLC provides the following consulting services:

- **CORPORATE DEVELOPMENT**
Business plan development, support and oversight
Strategic plan development, implementation & advisory
New market strategy, planning and exploitation
Organizational re-molding and management services
Organizational development and consultation
Employee survey, coaching and training.
Corporate social responsibility & corporate sustainability
- **MANAGEMENT SERVICES**
Interim Executive/C-level Management
Corporate marketing, operations, strategy, strategic development
New business segment penetration
Executive mentoring
- **GOVERNMENTAL AFFAIRS AND ADVOCACY**
Federal & State Government advocacy support
- **INTERNATIONAL BUSINESS DEVELOPMENT**
Assistance in non US firms locating in the US
Business partner search
Diplomacy assistance
- **BUSINESS AND PROJECT MANAGEMENT OVERSIGHT AND ASSISTANCE**
Risk management reviews
Consulting assistance on company and project operations, contract administration and task execution
P & L review and recovery
Government and commercial capture
Organization optimization
Communication facilitation
Conflict resolution
Performance evaluation
Counseling skills
Executive coaching and interim executive management
Manufacturing (machine parts, assemblies, capabilities)
Quality assurance review and assistance
- **BUSINESS DEVELOPMENT**
Proposal development support

Capture assistance -- Aerospace/Defense, Energy and technology market sectors

New market creation & Penetration

- **MARKETING AND COMMUNICATIONS PROGRAMS**
Marketing positioning and branding
Development and maintenance of marketing/communications programs
Marketing campaign development
New market creation & penetration
- **RENEWABLE ENERGY**
Market trends
Various renewable solutions
Overcoming barriers to entry
Finding strategic partners
Testing facilities and procedures
- **SPECIALISTS IN THE FOLLOWING:**
Water treatment

As part of his consulting business responsibilities with the LLC, Councilmember Allowos gives speeches for profit to clients. The Councilmember, as the owner of the LLC, has maintained the following documents for the two calendar years immediately preceding the year in which the consideration for any payment was provided:

- (1) Books and records of accounting consistent with the operation of the LLC.
- (2) Copies of tax returns filed in connection with the operation of the LLC.

You stated that making speeches is not the predominant activity of the LLC. During the 12-month period prior to and including the date of the speeches given by the Councilmember, less than 50 percent of the hours spent on the LLC are devoted to the preparation and/or delivery of speeches. During the 12-month period prior to and including the date of the speeches given by the Councilmember, less than 50 percent of the gross income of the Councilmember's business with the LLC is devoted to the preparation and/or delivery of speeches.

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." 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."

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.

Exceptions

Section 89501(b) provides:

“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 California Code of Regulations, Title 2, Sections 18932.1 through 18932.3; and

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

Regulation 18932.1(a) sets forth the test for determining when an individual’s business is “bona fide” and provides as follows:

“For purposes of Government Code Sections 89501 through 89506, a business is presumed to be ‘bona fide’ if the owner of the business has maintained the following documents for the two calendar years immediately preceding the year in which the consideration for the payment was provided:

“(1) Books and records of accounting consistent with the operation of a business; and

“(2) Copies of tax returns filed in connection with the operation of the claimed business.”

You stated that as the owner of the LLC, the Councilmember has maintained the following documents for the two calendar years immediately preceding the year in which the consideration for the payment was provided:

- (1) Books and records of accounting consistent with the operation of the LLC.
- (2) Copies of tax returns filed in connection with the operation of the LLC.

Thus, the terms of the exception are met. Despite meeting the requirements of Regulation 18932.1(a), a business is not a “bona fide business” if speechmaking is its sole or predominant activity. Regulation 18932.3 provides (as pertinent to your facts) that speechmaking is presumed to be the “predominant activity” of an individual’s business, trade, or profession in the following circumstances:

- (1) During the 12-month period prior to and including the date of the speech, more than 50 percent of the hours spent on an individual’s business, trade, or profession is devoted to the preparation and/or delivery of speeches; or
- (2) During the 12-month period prior to and including the date of the speech more than 50 percent of the gross income of the individual’s business, trade, or profession is derived from the preparation and/or delivery of speeches.

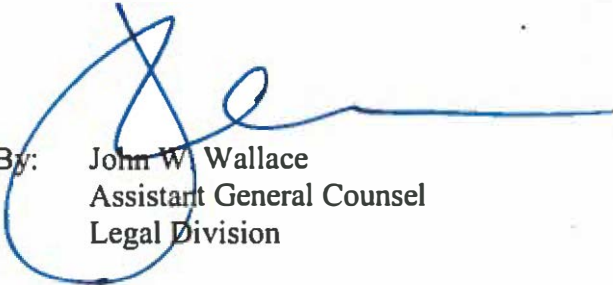
You stated that making speeches is not the predominant activity of the LLC. You stated that during the 12-month period prior to and including the date of the speeches given by the Councilmember, less than 50 percent of the hours spent on the LLC are devoted to the preparation and/or delivery of speeches. During the 12-month period prior to and including the date of the speeches given by the Councilmember, less than 50 percent of the gross income of the Councilmember’s business with the LLC is devoted to the preparation and/or delivery of speeches.

Based on your facts, the Act does not prohibit the Councilmember from receiving compensation for the activities you described in connection with his consulting business because it is earned income for personal services, which is customarily provided in connection with the practice of a bona fide business.

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

Sincerely,

Jack C. Woodside
General Counsel

By: 
John W. Wallace
Assistant General Counsel
Legal Division

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