




VIA PDF EMAIL ONLY

TO: Chair and Commissioners
Zackery P. Morazzini, Esq.
William J. Lenkeit, Esq.
Fair Political Practices Commission

FROM: Chip Nielsen 

DATE: August 20, 2013

RE: Commission Meeting – August 22, 2013 - Agenda #46:

Government Code Section 89506 and FPPC Regulations
18950, 18950.1 and 18950.3

Senior Commission Counsel Bill Lenkeit and I have talked three times during the last 10 days about the proposed repeals and amendments to these three regulations. We are in substantial agreement, but we have one polite difference of opinion, and he invited me to submit my written comments.

For the reasons discussed below, I oppose the current recommendation to the Commission that at this meeting it repeal the (1) speech events rules and (2) government entity or charity payments rules in regulations in 18950.1(a) and (b) and not replace them at this time.

Instead the Commission should move these two provisions into Regulation 18950.3 and ask the Legal Division to return to the Commission with proposed amendments of 18950.3.

Second, I support the decision made this week by the Legal Division to keep the current definition of “speech” in 18950.3(a)(1), which tracks the statute, but to move it into 18950(a)(2).

The PRA Travel Statute is Government Code §89506

Government Code Section 89506 is the travel payments provision of the Political Reform Act (Chapter 9.5, Ethics, Article 3).

This statute covers two travel situations: (1) travel in connection with a speech within the United States (Section (a)(1)), and (2) travel anywhere in the world when the travel costs are paid by a government or charity (Section (a)(2)).

Currently, these two situations are interpreted in FPPC Regulation 18950.1(a) (travel payments in connection with speech events) and 18950.1(b) (travel payments paid by government entities or charities).

Further, the term “speech” is currently defined in Regulation 18950.3(a)(1).

Current FPPC Staff Recommendations (dated July 9, 2013)

The current draft recommendations to the Commission are to repeal 18950.1(a) and (b) and to adopt six FPPC “travel rules” to cover the following six situations:

- (1) payments to an agency to fund its personnel’s travel (18944),
- (2) travel in connection with official agency business (18950.1),
- (3) travel by an official for bonafide business purposes (18950.2),
- (4) admission, food and handouts in connection with a speech event (18950.3),
- (5) campaign travel (18950.4), and
- (6) officials traveling to support other campaign committees (18727.5).

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These six situations all relate to travel by public officials, and the Commission should consider regulations for each situation.¹

But you will note that in these six situations there is no regulation for travel paid by governments or charities, and (2) the new speech regulation does not address payments for transportation or accommodations.

ANALYSIS

1. Current FPPC Regulation 18950.1

Currently, the “speech travel” and the “government or charity paid travel” regulations are 18950.1 (a) and (b). The recommendation is that these two provisions be repealed and there be no substitute at this time.

The Legal Division’s objection to them is that they are redundant to the statutory language of 89506(a)(1) and (2). That is correct, but if you first read Government Code Section 89506(a)(1) and (2) and then read current 18950.1(a) and (b), I think you will conclude that the regulations add to the clarity and understanding of the statute.

And there will be confusion on why these two were repealed, and there will be no confusion if they remain until they are revisited separately later this year.²

Since the Legal Division agrees there is a need for regulations on these two statutory provisions of 89506 but that it wants to do that separately later in the year, I asked the Commission to do what it did two years ago and, at this meeting, leave these regulations “as is.” You should also ask the Legal Division to address them later this year.

¹ I have not reviewed any of these proposed regulations.

² This current recommendation to repeal 18950.1(a) and (b) is identical to the same recommendation made to the Commission in the fall of 2011 when all the gift regulations were before the Commission. On November 1, 2011, I wrote to express my serious reservations on repealing these 89506 regulations, and the Commission agreed. You did not repeal them, but you stated that they would be considered later.

2. Relocate Current 18950.1(a) and (b) Regulations

Since current 18950.1(a) (the speech rule) will no longer fit in the newly proposed 18950.1 (travel in connection with Official Agency Business), the current speech rule should be moved to 18950.3.

Since current 18950.1(b) (governmental entity or charity rule) also will no longer fit in the newly proposed 18950.1, it should also be moved to 18950.3, and the title of 18950.3 should be expanded to cover both (1) speech events and (2) travel paid by governments or charities.

3. Definition of “Speech” Should Not Be Changed

In my phone calls yesterday and today with Bill Lenkeit, I was pleased to learn that the Legal Division will withdraw its proposal for a new definition for “speech,” as presently proposed in new regulation 18950(a)(2), dated July 9, 2013.

Instead the Commission will be asked to continue the existing definition of “speech,” which is currently in section 18950.3(a)(1), by repealing it there but adopting it as 18950(a)(2).

This is a good decision because the current definition of “speech” tracks 89506.

My Other Specific Recommendations for Later Consideration

The Legal Division did not feel that any of my specific written recommendations of November 1, 2011 or August 1, 2013 were ones that it would recommend to the Commission at this time. The Commission has a lot to consider on the other proposed regulation changes in Agenda #46, and since it plans a separate look at the 89506 regulations later this year, I am not pushing for any of them now.

But I ask that when the Legal Division looks at specific regulations for Government Code Section 89506 later this year that it review these recommendations to see if some of them would provide more clarity and understanding not only for complying with Government Code Section

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89506 but also complying with other disclosure statutes of the Political Reform Act.

For example, certain donors of gifts, like lobbyists employers, must disclose travel “gifts” on their quarterly reports and those for travel payments regulated by 89506 may appear to be illegal because they exceed the current annual limit. Also state and local public officials must disclose any apparently “over-the-limit” 89506 travel payments on their annual Statements of Economic Interest. The FPPC Guides address both situations with advice like “identify gift as ‘not subject to limits (Gov Code §89506,’” but it may be appropriate to address this in “travel regulations.”

An IP meeting on 89506 regulations will likely identify more suggestions on appropriate regulations.

I think additional interpretations and clarifications will benefit both public officials accepting, and the persons desiring to provide, travel payments that are “related to a legislative or governmental purpose or to an issue of state, national or international public policy.” (Government Code Section 89506(a).)

Again, I appreciate the opportunity to comment.

Respectfully submitted.

VGN/cll