



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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**To:** Chair Remke, Commissioners Audero, Cardenas, Hatch, and Hayward  
**From:** Jack Woodside, General Counsel; John M. Feser, Commission Counsel  
**Subject:** Compensation for Commission Members (\$100 per diem)  
**Date:** February 5, 2018

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Questions have arisen as to the scope and authority for the compensation paid to Commissioners for their work associated with the Commission. This memo provides an overview of current practices and guidelines for any potential new policy.

### **Background**

Government Code section 83106 provides:

The chairman of the Commission shall be compensated at the same rate as the president of the Public Utilities Commission. Each remaining member shall be compensated at the rate of one hundred dollars (\$100) for each day on which he engages in official duties. The members and chairman of the Commission shall be reimbursed for expenses incurred in performance of their official duties.

There is no case law that interprets or cites section 83106. The only analysis of the statute is provided in an Attorney General Opinion that addresses compensation for Commission members under section 83106. (*The Honorable Michael Bennett*, 60 Ops. Cal. Atty. Gen. 16 (1977); Attachment A [the AG Opinion].)<sup>1</sup>

In short, the AG Opinion concludes that members of the Commission are engaging in “official duties” and may receive compensation only for attendance at and travel to and from meetings and hearings of the Commission *unless* there is a clearly articulated policy adopted by the Commission authorizing additional activities. Subject to certain restrictions, a policy could include compensation for additional activities, including preparation work for Commission meetings and participation in the work of a subcommittee.

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<sup>1</sup> “Although an official interpretation of a statute by the Attorney General is not controlling, it is entitled to great respect.” (*Thorning v. Hollister School Dist.* (1992) 11 Cal.App.4th 1598, 1604.) “Opinions of the Attorney General, while not binding, are entitled to great weight. [Citations.] In the absence of controlling authority, these opinions are persuasive 'since the legislature is presumed to be cognizant of that construction of the statute.' [Citation.]” (*Napa Valley Educators' Assn. v. Napa Valley Unified School Dist.* (1987) 194 Cal.App.3rd 243, 251.)

In 1977, shortly after the AG Opinion, the Commission adopted Regulation 18306, entitled “Compensation and Reimbursement for Members of the Fair Political Practices Commission.” The key points of the regulation included: 1) compensation at \$12.50 per hour, not to exceed \$100 per day; 2) a definition of “official duties” to include preparing for meetings or hearings of the Commission, performing activities deemed by the Chairman and Executive Director to be essential to the functioning of the Commission, such as attending meetings, other than Commission meetings, for the purpose of discharging the duties imposed upon the Commission; and 3) a requirement that the Commission approve at a regularly scheduled meeting any claim that exceeds 40 hours a calendar month. In 1983, the regulation was repealed because “it deals exclusively with internal management matters.”<sup>2</sup> (Attachment B, Former Regulation 18306 and supporting documents.)

#### **A. Current Commission Practice: Maximum of Two Days Compensation Per Month**

The Commission has not adopted a formal policy for compensation of Commission members since the repeal of Regulation 18306, and consequently, there is no clear record of the reimbursement practices from 1983 to the present. However, for at least the past six years, the Commission’s practice has been to reimburse Commission members up to a maximum of two days per month if a Commission meeting is held and they submit a claim for reimbursement, including any travel expenses.

Unfortunately, it appears that neither the Commission’s practices nor the information provided to the Commissioners has been consistent. The confusion includes the information provided in the Commissioner Manual, which provides:

With the exception of the Chair, Commissioners are compensated at the rate of \$100 for each day on which they engage in official duties. This includes not only attendance at monthly Commission meetings, but time spent preparing for those meetings and any other time spent on Commission-related activities. Commissioners are compensated for a minimum of 8 hours on the day of a Commission meeting, even if the meeting does not take the full 8 hours. All other time spent engaging in official FPPC business will be accrued and compensated at the \$100 per day rate, or \$12.50 per hour for less than an eight-hour day.<sup>3</sup>

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<sup>2</sup> As advised in the AG Opinion, the Commission initially adopted a compensation regulation pursuant to the Administrative Procedure Act. (AG Opinion, fn. 3, [“Rules or standards of general application interpreting or implementing section 83106, a law involving an important public interest, are not such that relate only to the internal management of the commission and therefore must be promulgated in accordance with the Administrative Procedure Act.”]) It is unclear why the Commission subsequently reversed itself and concluded that such a policy dealt exclusively with internal management matters and was not subject to the APA. Even if the Commission decides not to implement a regulation, any proposed policy should be noticed and adopted at a public meeting to establish a clear record, allow for public comment and avoid potential violations of open meeting laws.

<sup>3</sup> The final sentence regarding compensation at “\$12.50 per hour for less than an eight-hour day” was deleted with the last update to the Commission Manual in December 2017. Since the practice has been to reimburse Commissioners for a full day, and not reimburse at a prorated amount, that sentence appeared superfluous.

Since staff is unaware of any formal policy approved by the Commission after 1983, the record is unclear as to exactly when “time spent preparing” or “Commission-related activities” was included in the above provision. However, pursuant to an informal practice, prior Commission Chairs have monitored and implemented compensation policies consistent with the needs of Commissioners and the budgetary constraints of the agency. Pursuant to this practice, at some point Commissioners were permitted to claim reimbursement for meeting preparation. (See, Nov. 17, 2011 Chair Ravel email [additional compensation limited to one day of preparation unless “extraordinary circumstances,” in which case up to three days if approved in advance]; Attachment C.)

As discussed below, these informal practices do not meet the minimum requirements set forth in the AG Opinion for reimbursement for additional activities beyond attendance and travel. For example, they do not control expenditures, impose restraints on excessive and unnecessary compensation claims, or categorize activities that fall within the statutory definition of “official duties” of the FPPC.

Unless a clearly articulated policy is adopted, the current practice of limiting compensation only for attendance at and travel to and from meetings and hearings of the Commission is the most prudent and legally supported approach.

## **B. The Commission May Adopt a Clearly Articulated Policy That Allows Per Diem Compensation Above the Two-Day Limit**

### **1. Commission members may receive per diem compensation only for attendance at and travel to and from Commission meetings**

“Statutes granting compensation or expenses to public officials are strictly construed in favor of the government and where there is ambiguity the construction must be in favor of the government. [Citations.] The purpose of the rule is to protect the public fisc from unnecessary or excessive claims from public officials.” (AG Opinion at p. 4.)

Based on the rule of strict construction, a Commission member engages in “official duties” within the meaning of section 83106 when he or she attends a regular meeting or a properly called special meeting of the commission or hearing conducted by the commission or is traveling to and from one of those events. (AG Opinion at p. 5.) Diligent performance of these functions is the limit of the *inherent duties* of a Commission member. (*Ibid.*)

### **2. A preparation activity is compensable if the Commission determines the activity is essential to its function as a body within the constraints of its statutory duties and powers**

Statutes providing compensation for public officials may be given an expansive interpretation only where there is some mechanism external to the individual official’s judgment which tends to restrain excessive and unnecessary claims. (AG Opinion at p. 4.) Thus, if “official duties” found in section 83106 is to be expanded beyond its inherent meaning, there must be a mechanism external to the judgment of an individual official of the Commission capable of

restraining excessive and unnecessary claims. (*Id.*)

Preparation activities for Commission meetings and hearings may constitute official duties. (AG Opinion at p. 5.) In determining what constitutes compensable preparation activities, the Commission would need to decide what member activities are essential to its function as a body within the constraints of its statutory duties and powers. (*Id.* at pp. 5-6.) Control of expenditures for preparation activities through policies formally adopted by the Commission itself provides the necessary restraint on excessive and unnecessary claims, and would “be a check on the possibility of an individual member’s being uncritical and self-indulgent regarding claims which he submits.” (*Ibid.*)

### **3. Pro rata versus per diem compensation**

“[S]ection 83106 permits pro rata compensation of members of the commission where the service rendered on a given day requires less than a normal workday.” (AG Opinion at p. 8.) “In providing pro rata compensation by breaking the daily rate into an hourly rate based on the regular eight-hour day, i.e., \$12.50 per hour, the official is fairly compensated in terms of section 83106 and the potential siphon of the public treasury for minimal effort is avoided.” (*Id.*)

Whether pro rata compensation is warranted today is a question the Commission may consider if it decides to adopt a compensation policy for additional activities. The AG Opinion was published in 1977. The costs required to administer the hourly billing of five Commissioners is higher today than 1977. Thus, the opposite may now be true: pro rata compensation could siphon more from the public treasury and require more effort than \$100 per diem compensation. Moreover, section 83106 does not expressly authorize pro rata compensation. The AG Opinion found pro rata compensation was permitted under section 83106 based on another statute, Public Resources Code section 30314, which expressly permits \$12.50 per hour compensation for members and alternates of the California Coastal Commission. (*Id.* at fn. 7.)

Consequently, the express provision for \$100 per diem compensation in section 83106, and the cost and time required to administer pro rata compensation, warrants consideration if any policy is to be adopted.

### **Conclusion and Recommendation**

The current practice of compensating Commissioners two days per month (attendance at Commission meeting/travel to and from) is consistent with the AG Opinion and statutory law.

If the Commission decides the current rate of compensation is insufficient, as discussed above, the Commission should adopt a clearly articulated policy that, at a minimum defines, permissible activities with appropriate safeguards. If the Commission decides to pursue a formal policy authorizing compensation for additional activities, staff recommends that it gather compensation policies from other state commissions and boards, compile best practices, and bring options back to the Commission for consideration.

## **Attachment A**

60 Ops. Cal. Atty. Gen. 16 (Cal.A.G.), 1977 WL 24847

Office of the Attorney General

State of California  
Opinion No. CV 76-20  
January 6, 1977

**\*1 THE HONORABLE MICHAEL BENNETT  
EXECUTIVE DIRECTOR OF THE FAIR POLITICAL PRACTICES COMMISSION**

**THE HONORABLE MICHAEL BENNETT, EXECUTIVE DIRECTOR OF THE FAIR POLITICAL PRACTICES COMMISSION, has requested an opinion from this office on the following questions:**

**1. Is a member of the Fair Political Practices Commission entitled to compensation for attendance at:**

**a. Regular meetings of the commission?**

**b. Special meetings of the commission?**

**c. Committee meetings of the commission?**

**d. Hearings conducted by the commission?**

**2. If the answer to all or part of question one is affirmative, is a member of the commission entitled to receive the full \$100 daily compensation:**

**a. If the meeting or hearing lasts only part of the day?**

**b. If the member of the commission attends only part of the meeting?**

**3. Is a member of the commission entitled to compensation:**

**a. For time spent preparing for meetings and hearings described in question one?**

**b. For time spent preparing for and engaging in other activities performed at the request of the chairman or the executive director?**

**4. If the answer to all or part of question three is affirmative, is it within the power of the commission:**

**a. To impose a maximum monthly amount of compensation which may be paid to a member of the commission for activities described in question three (a)?**

**b. To decline to pay compensation for time spent making public speeches or appearances or giving interviews, notwithstanding that such activities are carried out at the request of the chairman or the executive director?**

**c. To decline to pay compensation for time spent traveling in connection with compensable official duties?**

**d. To pay compensation for activities described in question three on an hourly basis rather than pay \$100 for each day in which any official duties are engaged in?**

5. Do the expenses for which a member of the commission is entitled to reimbursement include:

a. Travel and per diem on the same basis as state employees who travel on official business?

b. Stamps, supplies and secretarial services they employ in connection with official duties?

The conclusions are:

1. A member of the commission is entitled to compensation for attendance at regular, special or committee meetings and hearings conducted by the commission.

2. A member is entitled to receive one hundred dollars for each day on which he or she attends a commission meeting or hearing although the meeting or hearing may last only part of the day or the member may attend only part of the meeting.

3. (a) If officially adopted policy of the commission authorizes it, a member is entitled to compensation for preparation for meetings and hearings.

(b) If the activity is essential to the decision making process of the commission and the commission has officially authorized such activity, a member may be compensated for engaging in the activity at the request of the chairman or executive director where the commission has delegated such authority.

\*2 4. (a) Assuming the commission authorizes preparation activity, it may not impose a maximum monthly amount of compensation for a member's preparation for meetings and hearings. However, it may limit the type of activity which is considered an official duty and it may impose verification procedures.

(b) Unless the commission officially adopts a policy recognizing speech making, public appearances and granting interviews as official duties, a member is not entitled to compensation for engaging in such activities. However, the commission's power to authorize payment for such activities is limited.

(c) A member is entitled to compensation for time spent in necessary travel in connection with compensable official duties and the commission is without authority to deny payment.

(d) The Political Reform Act authorizes payment of compensation for authorized preparation activity on an hourly basis, not to exceed a maximum of \$100 for any single day.

5. (a) A member is entitled to reimbursement for travel expenses on the same basis as state employees who travel on official business.

(b) A member is entitled to reimbursement for costs incurred in emergencies for stamps and supplies required for official business while traveling if approved by the commission or the chief administrative officer of the commission for a purchase over \$10. A member may be reimbursed for secretarial services only in connection with travel expenses and then only if civil service secretarial services is unavailable.

#### ANALYSIS

The Fair Political Practices Commission was established by the Political Reform Act of 1974 (Gov. Code, tit. 9, § 81000 et seq.<sup>1</sup>), which was enacted on June 4, 1974, through the initiative process and except for chapter 8, relating to ballot

pamphlets, became effective on January 7, 1975. The commission consists of five members, including the chairman, and no more than three can be of the same political party. § 83100. The chairman and one other member are appointed by the Governor; the Attorney General, the Secretary of State and the Controller each appoints one of the other members. §§ 83101, 83102.

The commission is charged with primary responsibility for the administration and implementation of the act. § 83111. Generally, the act requires disclosure of campaign contributions and recording of campaign expenditures (ch. 4); limits expenditures in statewide elections (ch. 5); establishes registration and reporting requirements for lobbyists (ch. 6); establishes procedures for defining and detecting conflicts of interest of state and local officials and preventing such from affecting government action (ch. 7); sets specifications for ballot pamphlets (ch. 8); eliminates certain advantages of incumbent elected officials (ch. 9); and establishes enforcement mechanisms (chs. 10 and 11). The commission is required to prescribe forms for reports, statements, notices and other documents required by the act; to prepare and publish manuals and instructions to facilitate compliance with and enforcement of the act; and to provide assistance to agencies and public officials in administering the act (§ 83113). The commission is empowered as requested to issue opinions regarding the duties of persons so requesting (§ 83114), to investigate violations of the act at the state level (§ 83115); and upon probable cause to hold hearings to determine if a violation has occurred and, if so, to require certain actions and impose penalties (§ 83116). The commission is to have a staff whose duties and compensation it controls (§ 83107).

\*3 The series of questions posed raises three basic issues concerning the meaning of section 83106, which authorizes compensation for and reimbursement of expenses incurred by the members of the commission. The first issue involves what activities of members can be considered official duties. The second concerns the flexibility of the rate of compensation prescribed. The third pertains to what expenses incurred by members in activities related to commission functions are reimbursable. The conclusions reached regarding the specific questions posed are derived in the course of exploring these issues.

#### SERVICES FOR WHICH COMMISSION MEMBER IS ENTITLED TO COMPENSATION

Descriptions of a variety of activities in which a member of the commission might be engaged have been presented for an opinion as to which activities would entitle a member other than the chairman to the compensation prescribed by section 83106, which provides:

'The chairman of the Commission shall be compensated at the same rate as the president of the Public Utilities Commission. Each remaining member shall be compensated at the rate of one hundred dollars (\$100) for each day on which he engages in official duties. The members and chairman of the Commission shall be reimbursed for expenses incurred in performance of their official duties.'

Since a member of the commission other than the chairman is entitled to compensation only when he or she engages in official duties, a sense of what are the duties of a member is critical. Except that section 83108 provides that the commission may delegate authority to the chairman and the executive director to act in the name of the commission between meetings, and relevant powers, duties and authority as surveyed, supra, are vested in the commission. Keeping in mind the knowledge that it is the commission which is the entity responsible for implementation of the act, it is helpful in analyzing the nature of a member's official duties to consider an abstract concept of official duties formerly used in determining governmental tort liability. In White v. Towers, 37 Cal.2d 727, 733 (1951), the California Supreme Court adopted the following general test for determining whether certain acts of a public officer are within the scope of his authority so as to immunize him from liability for the consequences thereof:

'Duties of public office include those lying squarely within its scope, those essential to accomplishment of the main purposes for which the office was created, and those which, although only incidental and collateral, serve to promote the accomplishment of the principal purposes.' (Nesbitt Fruit Products v. Wallace, 17 F.Supp. 141, 143.)'



Although the rule was adopted prior to passage of the Tort Claims Act (§ 810 et seq.; Stats. 1963, chs. 1681 and 1715), it has continuing vitality in the context of the act. See [Neal v. Gatlin](#), 35 Cal.App.3d 871, 875 (1973); [Meester v. Davies](#), 11 Cal.App.3d 342, 347-348 (1970). The rule has been utilized as a general guide for determining the duties of a public official in contexts other than the Tort Claims Act. See [Ligda v. Superior Court](#), 5 Cal.App.3d 811, 825 (1970). As is apparent from the discussion in [Ligda, id.](#), the application of the formula depends on the nature of the office as established by law.

\*4 Using the [White](#) definition as a guide, the only duty, authority or power lying squarely within the scope of or inherent in the office of a member of the Fair Political Practices Commission is to participate in the decision making process of the commission. As required by the State Public Meetings Act (§ 11120 et seq.) and section 83110, the decision making process must take place in open meetings, except in certain circumstances, after notice to the public. In the course of such proceedings it may be the decision of the commission that the members need more information and analysis before making decisions on certain issues under its consideration. In implementing its decision the commission would have several alternatives open to it.

First, the commission could order the staff to prepare reports including the desired information and analyses. § 83107.

Second, it could form committees of its members to develop the necessary information and report back to the full commission. See 32 Ops.Cal.Atty.Gen. 240, 241 (1958); 4 McQuillan, *Municipal Corporations* (1968 rev. ed.) § 13.51, p. 572.

Third, an extended series of meetings of the commission could be held to develop the information.

Fourth, it could be decided that action on a matter be postponed to or scheduled at a future meeting and that members should prepare themselves to take action at that time possibly in specified ways such as reviewing staff reports or preparing alternative courses of action.

There can be little doubt that when a member attends regular or special meetings of the commission scheduled in accordance with section 11125 he is engaged in the inherent duties of his office.<sup>2</sup>

In contrast to the expansive concept of an official's scope of authority or employment called for by the judicially recognized policies of the Tort Claims Act (see [Neal v. Gatlin, supra](#), at p. 875; [Meester v. Davis, supra](#), at pp. 347-348) or the Workmen's Compensation Law (see [Lundberg v. Workmen's Comp. App. Bd.](#), 69 Cal.2d 436, 439 (1968); [Rich v. Industrial Accident Com.](#), 36 Cal.App.2d 628, 632 (1940), statutes granting compensation or expenses to public officials are strictly construed in favor of the government and where there is ambiguity the construction must be in favor of the government. [County of San Diego v. Milotz](#), 46 Cal.2d 761, 767 (1956); [County of Marin v. Messner](#), 44 Cal.App.2d 577, 585 (1941); see also [Markman v. County of Los Angeles](#), 35 Cal.App.3d 132, 134 (1973); 58 Ops.Cal.Atty.Gen. 183, 186, 223, 224 (1975). The purpose of the rule is to protect the public fisc from unnecessary or excessive claims from public officials. See 7 Ops.Cal.Atty.Gen. 325, 327, 329 (1946).

In applying the foregoing rule it has been determined that where a statute allows a twenty-five dollar per diem 'for attendance upon meetings of the authority' members are entitled to that compensation for days actually and necessarily spent traveling to and from meetings of the authority but are not entitled to it for work in preparation for meetings or any other activity other than actual attendance upon meetings. 2 Ops.Cal.Atty.Gen. 2, 3 (1943). It was recognized, however, that there were statutes granting compensation and expenses to other public officials in broader language which might include additional activities but even those would be strictly construed. [Id.](#)

\*5 A later opinion, 7 Ops. Cal. Atty. Gen. 325, supra, concludes that the following statutory language entitled members of the Youth Services Advisory Committee to the specified allowances for attendance at subcommittee meetings called by the Governor or an appropriate designee and for travel to and from:

'... when called into conference or session by the Governor or a department head designated by him shall be reimbursed for their actual and necessary expenses incurred in connection with such conferences or sessions, or in lieu thereof shall receive mileage and ten dollars (\$10) per day of actual service.'

In reaching this conclusion it was reasoned that the rule of strict construction did not require an inference that the concepts 'conference' and 'sessions' applied only to meetings of the full committee because any meetings had to be authorized by the Governor or his designee rather than the chairman on his own authority, thereby establishing a sufficient restriction against ad hoc events related to committee affairs providing the basis for unnecessary or excessive claims on the public fisc. 7 Ops. Cal. Atty. Gen. 325, 327, supra.

Applying the rule of strict construction as previously applied, it is clear that a member of the Fair Political Practices Commission is engaging in 'official duties' within the meaning of section 83106 when he or she attends a regular meeting or a properly called special meeting of the commission or hearing conducted by the commission or is traveling to and from one of those events. Diligent and faithful performance of those functions is the limit of the inherent duties of a member of the commission. As indicated in 7 Ops. Cal. Atty. Gen. id., a statute which provides compensation for public officials may be given an expansive interpretation only where there is some mechanism external to the individual official's judgment which tends to restrain excessive and unnecessary claims. Therefore, if the concept 'official duties' found in section 83106 is to be expanded beyond its inherent core of meaning, there must be a mechanism external to the judgment of an individual official of the commission capable of restraining excessive and unnecessary claims.

Returning to the White v. Towers rule, it is certainly reasonable to conclude that a member's preparation for meetings of and hearings conducted by the commission, although incidental and collateral to the performance of his inherent duty to participate in the decision making process of the commission, would serve to promote the accomplishment of that duty. Where these same activities are engaged in by the members in the course of the commission's deliberations during a meeting, it is fair to conclude that such activities are essential to the decision making process. Presumably, the commission as a whole has at least tacitly resolved that a decision on an issue is not possible without developing more information. In terms of the White v. Towers stratified concept of official duties, there is no doubt that preparation-type activity can be essential to accomplishment of the main purposes of the office.

\*6 It is apparent that an activity which in one context is merely incidental or collateral to a member's function can become essential in another. In the first instance, as demonstrated by the hypothetical regarding 'preparation activity' during actual meetings, it is for the commission as a whole to decide what activity on the part of the members in what context is essential to its function as a body within the constraints of its statutory duties and powers.

As noted previously, the purpose of the rule of strict construction is to check excessive and unnecessary compensation for and expense claims of public officials. Control of such expenditures through policies formally adopted by the commission itself as to what are essential activities would be a check on the possibility of an individual member's being uncritical and self indulgent regarding claims which he submits. Policies which are more than merely ipse dixit and demonstrate an essential connection between the activity being authorized and the role of participant in the commission decision making process would promote the policy reflected in the rule of strict construction. In accordance with the rule of strict construction, it is concluded that within the meaning of section 83106, the phrase 'official duties' does not include activities of a member other than attendance at and travel to and from meetings and hearings conducted by the commission itself unless there is a clearly articulated policy adopted by the commission authorizing such activity. Thus, members of the commission may receive compensation only for attendance at and travel to and from meetings and hearings of the commission unless other activities are authorized by the commission within the scope of its authority.<sup>3</sup>

If the commission were to establish committees of its members to study an issue or problem related to its powers, duties or authority and to report back with information and findings thereon,<sup>4</sup> such an action could not be considered arbitrary and members would be entitled to the compensation and reimbursement allowed by section 83106 for participation in the work of a committee. Similarly, if the commission's workload were such that its decision making process required some preparation prior to meetings or hearings to be effective, a formal policy, for example, of providing a meeting agenda and materials to members for their study in advance of meetings, thereby entitling them to compensation, would not be arbitrary, especially if some informal time toleration were indicated.<sup>5</sup>

However, the connection between making public speeches or appearances or giving interviews and participation in commission decision making processes is tenuous at best. Recent experience has educated and enhanced the public consciousness of the difference between 'junketing,' as well as other more mischievous forms of self aggrandizement, and public service. A fairminded appraisal of a member's speechmaking, public appearances or being interviewed at times other than in the course of performing official duties would be that such activities would rarely, if ever, be more than incidental or collateral to the inherent function of a member of the commission.

\*7 Against this background it is suggested that there would be a bona fide issue of arbitrariness regarding any commission policy authorizing such activities which did not specifically articulate the essential relationship between a particular incident of this type and the decision making process of the board. However, the commission has been assigned the duty of assisting other public agencies and officials charged with responsibility in administering the Political Reform Act of 1974, § 83113, subd. (c). From time to time joint meetings of representatives of the Attorney General, the Secretary of State and the Franchise Tax Board are held to facilitate and coordinate administration of the act. The commission clearly may authorize its members to attend such meetings.

Where the commission authorizes it pursuant to section 83108,<sup>6</sup> the executive director or the chairman may arrange for a member or members to perform authorized activities.

#### COMPENSATION TO WHICH A COMMISSIONER IS ENTITLED

The settled rule regarding compensation of public officials is:

' . . . that compensation for official services depends entirely upon the law; that statutes relating to such compensation are strictly construed in favor of the government; that a public officer may only collect and retain such compensation as is specifically provided by law, . . . ' [County of San Diego v. Milotz](#), 46 Cal.2d 761, 767 (1956).

Members of the commission are to be compensated in accordance with section 83106, which, as noted above, provides for compensation of members ' . . . at the rate of one hundred dollars (\$100) for each day on which he engages in official duties' plus reimbursement of expenses.

When a commissioner devotes less than the normal eight-hour workday to his or her official duties on a given day, the question arises as to whether that member is entitled pursuant to section 83106 to a full \$100 for that day or whether a prorated amount should be paid. Section 83106 does not provide a direct answer to that question, due to the phrase 'at the rate of one hundred dollars (\$100) for each day on which he engages in official duties.' Generally the quoted phrase might be understood as a statement of the concept known as 'per diem compensation.' Many courts faced with the issue have decided that where compensation of a public official is set by statute at a certain sum per day, performance of any substantial service on a particular day entitles such official to the full amount even though such service does not require a full day. [State ex rel. Greb v. Hurn](#), 102 Wash. 328, 172 P. 1147 (1918), 1 A.L.R. 274; 63 Am.Jur.2d 859, Public Officers

and Employees § 377; 58 Ops. Cal. Atty. Gen. 396 (1975); 41 Ops. Cal. Atty. Gen. 47 (1963); and cf. [Robinson v. Dunn](#), 77 Cal. 473, 475 (1888). The statute construed in [State ex rel. Greb v. Hurn](#), *supra*, 172 P. 1148, provided that: 'Each official reporter so appointed shall be paid a compensation at the rate of ten dollars (\$10) per diem for every day that he is actually in attendance upon said court pursuant to the direction of the court.'

\*8 However, insofar as can be determined, no California court has ruled that per diem compensation may not be prorated where duties occupy less than a normal workday; although it has been decided that no more than the per diem amount may be paid for a day on which more than the normal hours are required. See [Robinson v. Dunn](#), *supra*.

If section 83106 were intended to be merely a restatement of the per diem concept, the phrase 'rate of' is just surplus verbiage. In California construction of a statute which makes some words surplusage is to be avoided. [People v. Gilbert](#), 1 Cal.3d 475, 480 (1969); [Select Base Materials v. Board of Equal.](#), 51 Cal.2d 640, 645, 646-647 (1959); [Van Nuis v. Los Angeles Soap Co.](#), 36 Cal.App.3d 222, 228-229 (1973). If 'rate of' means that \$100 for each day is merely a frame of reference for computing a member's entitlement, there is room for administrative interpretation and for adjustment for pro rata compensation. The dictionary definition of 'rate' suggests that the word can be understood to have such a meaning in the context of section 83106. Webster's Third New International Dictionary, Unabridged, page 1884, states one definition of 'rate' as:

'a charge, payment, or price fixed according to a ratio, scale or standard ....'

As noted in [County of San Diego v. Milotz](#), *supra*, a construction of a statute providing compensation for a public officer which fairly favors the public treasury over the benefit of the officer is preferred. In providing pro rata compensation by breaking the daily rate into an hourly rate based on the regular eight-hour day, i.e., \$12.50 per hour, the official is fairly compensated in terms of section 83106 and the potential siphon of the public treasury for minimal effort is avoided.<sup>7</sup> Thus, in accordance with familiar legal maxim that 'the greater includes the less' (Civ. Code § 3536; cf. [Jud Whitehead Heater Co. v. Obler](#), 111 Cal.App.2d 861, 868 (1952); [Goldsmith v. Board of Education](#), 66 Cal.App. 157, 164 (1924)), section 83106 permits pro rata compensation of members of the commission where the service rendered on a given day requires less than a normal workday.

Moreover, we are informed that ever since it began functioning in January 1975, the commission has established a policy of allowing members the full per diem compensation for attendance at meetings while limiting compensation to an hourly rate for activity in preparation for meetings. Unless clearly erroneous, construction of statutes applied by agencies charged with responsibility for administering them are given great weight by courts. [Los Angeles City etc. Employees Union v. Los Angeles City Bd. of Education](#), 12 Cal.3d 851, 854 (1974); [Ralphs Grocery Co. v. Reimel](#), 69 Cal.2d 172, 176 (1968). Since the commission's policy is not an unreasonable construction of section 83106, it is concluded that the use of an hourly rate derived from the basic per diem compensation is authorized.

\*9 However, just as a member is entitled to compensation for days on which he or she must travel in order to perform official duties, 2 Ops. Cal. Atty. Gen., *supra*, at p. 3, although a full workday might not be entailed, duties which may themselves occupy less than a full workday will in effect require a member to devote an entire workday in being available. For example, dead time after a meeting or hearing which required but a few hours may leave insufficient time for a return trip home or for any other gainful activity. Thus, there would be no inconsistency with the authority to prorate for minimal preparation activity, which does not interfere with the remainder of a workday, in granting the full compensation for attendance at meetings and hearings, sessioning of which may not entail a full eight-hour day.

It is concluded, therefore, that section 83106 contemplates compensation at the stated rate or some reasonable proration based thereon, depending upon the degree to which a day is directly or by necessity indirectly devoted to the performance of official duties.<sup>8</sup>

## REIMBURSEMENT FOR EXPENSES

### Travel Expenses

Several questions have been posed regarding expenses allowable pursuant to section 83106. The first is whether members are entitled to travel and per diem on the same basis as state employees who travel on official business. It is concluded that members of the commission are entitled to reimbursement for official travel expenses pursuant to Board of Control rules applicable to state employees.

A previous opinion of this office concluded that statutory language entitling statutory officers to reimbursement for expenses in connection with official duties does so in the context of Board of Control rules unless the statute specifies otherwise. 7 Ops. Cal. Atty. Gen., *supra*, 326-327. The Board of Control is empowered to limit travel expenses of state officers pursuant to section 13920, paragraph (a), which provides in pertinent part:

'By a majority vote, the board shall adopt general rules and regulations:

'(a) Limiting the amount, time, and place of expenses and allowances to be paid to officers, agents, and employees of the state while traveling on official state business. The rules and regulations shall provide for reasonable reimbursement to an officer, agent or employee of the state for expenses incurred by him to repair a privately owned vehicle which was damaged through no fault of said officer, agent or employee; provided that the damage occurred while the vehicle was used on official state business with the permission or authorization of an employing agency.'

The Board of Control has established regulations (*Cal. Admin. Code, tit. 2, § 700 et seq.*) governing travel expenses which are applicable to both employees and statutory officers. There being nothing in section 83106 which merely requires that members 'be reimbursed for expenses incurred in performance of their duties,' specifying anything to the contrary regarding travel expenses, the Board of Control rules determine a member's right to be reimbursed for travel expenses.

### Supplies and Secretarial Services

\*10 The second question concerns whether a member is entitled to reimbursement for expenses incurred in the employment of secretarial services and purchase of supplies<sup>9</sup> in connection with official duties. It is concluded that a member may be reimbursed for purchase of supplies only if the purchase is authorized by the Department of General Services or for a purchase necessarily incurred in an emergency while traveling on official business. Emergency purchases in excess of \$10 must be approved by the executive director of the commission.

With regard to the purchase of supplies, section 14793 provides:

'No state agency may purchase equipment, supplies, or materials in the open market, unless permission has been given by the department [of General Services], upon a showing of the necessity therefor.'

Considering the fact that the commission has supplies routinely available to it pursuant to the procedures of State Administrative Manual (SAM) section 3500 et seq., a showing of necessity for expenses of individual members for business supplies would appear to be a difficult endeavor.

Such expenses might arguably be incurred because members may perform official business far from the principal office of the commission in Sacramento or other offices which the commission may establish (§ 83110). In these circumstances the expenses are related to travel on official business and will be governed by the rules of the State Board of Control

in accordance with section 13920, paragraph (a), [California Administrative Code, title 2, section 701, subdivision \(c\)](#), paragraph 2, promulgated by the Board of Control, defines travel expenses to include:

'(2) Business Expenses. Business expenses consist of the charges for business phone calls and telegrams; emergency clothing, equipment or supply purchases; and all other charges necessary to the completion of official business. Any emergency purchase shall be explained, and if over \$10 must be approved by the department head, deputy, or chief administrative officer.'

Except for the cost of phone calls and telegrams paid by a member, purchase of supplies must be occasioned by an 'emergency' and a purchase in excess of ten dollars must be approved by the chief administrative officer of the agency involved,<sup>10</sup> in this case the executive director.

Reimbursement for costs incurred for secretarial services presents additional considerations. Section 83107 provides in part:

'The Commission shall appoint and discharge officers, counsel and employees, consistent with applicable civil service laws, and shall fix the compensation of employees and prescribe their duties.'

Article XXIV of the California Constitution establishes the state civil service. Section 1, subdivision (a), of this article provides that:

'(a) The civil service includes every officer and employee of the state except as otherwise provided in this Constitution.'

[Section 4 of article XXIV](#) exempts members of boards and commissions and a deputy or employee of each board or commission from the civil service system but in subdivision (g) specifically denies exemption for any deputy or employee of a member of a board or commission.

\*11 In the absence of a showing that a function cannot be performed by persons selected pursuant to the provisions of the civil service system, [article XXIV](#) requires that the work be done by civil service employees. 17 Ops.Cal.Atty.Gen. 152, 154 (1951). As stated in 56 Ops.Cal.Atty.Gen. 353, 356 (1973):

'Interpretations of [article XXIV](#), both by the courts and in the opinions of this office, have tended to support the proposition that an individual who is performing services for the state and is being paid with state funds, unless either specifically exempted or in a unique factual setting, should be selected and retained pursuant to the civil service system. Cf. [Stockburger v. Riley](#), 21 Cal.App.2d 165, 169-170 (1937) (petition for hearing before the California Supreme Court denied July 22, 1937); [Evans v. Superior Court](#), 14 Cal.2d 563, 578-589 (1939); [Borum v. State Compensation Insurance Fund](#), 30 Cal.2d 575, 580 (1947); 24 Ops.Cal.Atty.Gen. 173 (1954); 30 Ops.Cal.Atty.Gen. 75 (1957); [California State Employees Association v. Trustees of California State Colleges](#), 237 Cal.App.2d 530, 534 (1965); [California State Employees Association v. Trustees of California State Colleges](#), 237 Cal.App.2d 541, 543 (1965).'

[Section 5 of article XXIV](#) specifically recognizes an exception to the foregoing general rule for temporary appointments for which there is no employment list. Furthermore, [Government Code section 19120](#) provides:

'The appointing power, to prevent the stoppage of public business when an actual emergency arises, or because the work will be completed within 30 working days, may make emergency appointments for a period not to exceed 30 working days without utilizing persons on employment lists and, if necessary, without regard to existing classes. The method of selection and the qualification standards for an emergency employee shall be determined by the appointing power. The frequency of appointment and length of employment of an individual under emergency appointments shall be restricted by the board by rule so as to prevent the use of emergency appointments to circumvent employment lists.'

'Service under emergency appointment shall be credited for purposes of layoff, vacation, sick leave and salary adjustment only if and as provided by board rule.'

The following regulations of the State Personnel Board found in [California Administrative Code, title 2, sections 301-303](#), provide:

'When emergency appointments are made under [Section 19120](#) of the act, the appointing power shall immediately notify the executive officer of the name of the appointee, the duties of the position, the reason for the appointment either by stating the nature of the actual emergency or by stating the nature of the work that is of short duration, and such further data as may be required by the executive officer. No authority exists in the appointing power to make an emergency appointment continuous.' [Cal. Admin. Code tit. 2, § 301](#).

\*12 'Emergency appointments for reasons other than actual emergency shall be subject to review by the executive officer to assure that the work is appropriate for emergency appointments and that such appointments are not for the purpose of circumventing employment lists.' [Cal. Admin. Code, tit. 2, § 302](#).

'No person may serve under emergency appointment for more than 30 working days in any four consecutive calendar months except that in case of fire, flood or other extreme emergency an extension may be approved by the executive officer.' [Cal. Admin. Code, tit. 2, § 303](#).

Since secretarial services are available to the commission within the civil service, obligations incurred by members for secretarial services cannot generally be assumed by the state without a special justification recognized by established commission policy which complies with [section 19120](#) and California Administrative Code, title 2, sections 301-303. As provided by sections 83107 and 18524,<sup>11</sup> the commission is the appointing power and as such must, pursuant to [section 19120](#), establish the policy for determining whether emergency appointments are justified. A factor to be weighed in determining whether an emergency exists within the meaning of [section 19120](#) might be the availability of clerical help pursuant to sections 18730-18732, which permit the State Personnel Board to establish clerical pools in any locality where appointing powers may need temporary help. A further factor is that modern technology makes possible utilization of secretarial services through such conveniences as telephonic dictation or instruction, mailing of cassette tapes, use of telecopying, etc.

Where an emergency appointment is made the state incurs an obligation to pay the appointee and that obligation is met through the regular payroll procedures prescribed in section 8520 of the State Administrative Manual.

A member could claim his expenses for secretarial services only in connection with a travel claim pursuant to [California Administrative Code, title 2, section 700 et seq.](#) However, the foregoing considerations regarding the availability of civil service secretarial assistance will be relevant in determining whether such claims are allowable.

EVELLE J. YOUNGER  
Attorney General  
GEOFFREY L. GRAYBILL  
Deputy Attorney General

#### Footnotes

- 1 All section references are to the Government Code unless otherwise stated.
- 2 Section 83116 provides that the commission may hold hearings to determine whether a violation of the act has occurred. A member's attendance at such a hearing conducted by the commission itself is clearly performance of an official duty.

- 3 Rules or standards of general application interpreting or implementing section 83106, a law involving an important public interest, are not such that relate only to the internal management of the commission and therefore must be promulgated in accordance with the Administrative Procedure Act (§ 11371 et seq.) Cf. [Poschman v. Dumke](#), 31 Cal.App.3d 932, 942-943 (1973); see also § 83112.
- 4 It should be noted that the commission may not delegate its decision making authority to a committee. 32 Ops.Cal.Atty.Gen., [supra](#), 241.
- 5 See discussion of compensation rate, [infra](#). The commission also has some discretion to deny or adjust claims which are not made in 'good faith.' In reviewing a public official's claim for per diem compensation a court has observed ([Smith v. County of Jefferson](#), 10 Colo. 17, 13 P. 917, 920 (1887)):  
 'The superintendent, as a witness on the trial below, testified to his good faith in rendering these services, and in charging his per diem therefor; that the whole business thus transacted justified the aggregate per diem charges included in the account rendered; that he never tried to make the work cover more time than was necessary for its transaction; that the average number of letters necessary to be written per day was from three to four, and his practice was to make no per diem charge for official correspondence unless it occupied at least one hour of his time. No separate charge was made for these services when there were other duties to perform.  
 'In this connection counsel for the appellee asks for an opinion 'as to what length of time will constitute a day's service for the superintendent.' We answer, the law does not recognize fractions of days; and, when it provides a per diem compensation for the time necessarily devoted to the duties of an office, the officer is entitled to this daily compensation for each day on which it becomes necessary for him to perform any substantial official service, if he does perform the same, regardless of the time occupied in its performance. An effort to stretch out the officer's official work from day to day, in order to charge for a greater number of days than was necessary, appears from the testimony not to have been done in any instance in the present case.'  
 Accordingly, the commission would be justified in adjusting a commissioner's claim where work has been 'stretched out' to maximize per diem salary or where only an insignificant amount of work is performed in a day.
- 6 Section 83108 provides:  
 'The Commission may delegate authority to the chairman or the executive director to act in the name of the Commission between meetings of the Commission.'
- 7 The Legislature has recently demonstrated in establishing the California Coastal Commission that it recognizes the efficacy of a proration approach for certain activities. [Public Resources Code section 30314](#), to be effective January 2, 1977 (Stats. 1976, ch. 1330), provides in pertinent part:  
 'Except as provided in this section, members or alternates of the commission or any regional commission shall serve without compensation but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for such expenses is not otherwise provided or payable by another public agency or agencies, and shall receive fifty dollars (\$50) for each full day of attending meetings of the commission or of any regional commission. In addition, members or alternates of the commission shall receive twelve dollars and fifty cents (\$12.50) for each hour actually spent in preparation for a commission meeting; provided, however, that for each meeting no more than eight hours of preparation time shall be compensated as provided herein.'
- 8 It should be noted that statutes providing for compensation for members of the various boards and commissions are stated in different ways. Some are compensated for attendance at meetings only (e.g. [Gov. Code § 10302](#)); others for meetings and specified other duties (e.g. [Health & Saf. Code § 6489](#)); others at a per diem for discharge of official duties (e.g. [Bus. & Prof. Code § 103](#)); and other variations. Given these differences, nothing in this opinion necessarily implies that authority to prorate compensation can be derived in each case.
- 9 For the purposes of this discussion 'supplies' include postage. Section 1224 allows refunds for postage costs incurred by state officers for official business in accordance with lawful claims procedures.
- 10 A recent ruling indicates that officials who without exercising due care authorize illegal expenditures of state funds are personally liable therefor. [Stanson v. Mott](#), 17 Cal.3d 206 (1976).
- 11 Section 18524 provides:  
 "Appointing power' means a person or group having authority to make appointments to positions in the State civil service.'

60 Ops. Cal. Atty. Gen. 16 (Cal.A.G.), 1977 WL 24847



## **Attachment B**

# Memorandum

To : Members of the Commission

Date : Feb. 22, 1977

From : FAIR POLITICAL PRACTICES COMMISSION  
Kenneth Finney

Subject: Proposed regulation 2 Cal. Adm. Code Section 18306.

Attached please find proposed regulation 2 Cal. Adm. Code Section 18306 which outlines the circumstances under which members of the Commission shall be entitled to compensation and reimbursement in connection with the performance of their duties. The regulation is being proposed because the Attorney General, in its opinion in response to the request from Mickey Bennett (No. CV 76/20, January 6, 1977), stated that rules interpreting or implementing Government Code Section 83106 "must be promulgated in accordance with the Administrative Procedure Act." A.G. Op. at 10, n.3.

With respect to compensation, the proposed regulation provides that each member of the Commission, other than the Chairman, shall receive \$100 for each day during which the member attends all or part of a Commission meeting, a meeting of a committee of the Commission, or a hearing conducted by the Commission. In addition, the regulation provides that each member of the Commission, other than the Chairman, shall receive \$12.50 per hour, not to exceed \$100 per day, for performing official duties. The regulation specifies that official duties include preparing for meetings or hearings of the Commission, necessary travel in connection with official duties, and performing activities deemed by the Chairman or Executive Director to be essential to the functioning of the Commission. The regulation also specifies that official duties shall not include speeches, public appearances, interviews or similar activities.

With respect to reimbursement, the regulation specifies that each member of the Commission shall be entitled to reimbursement for travel expenses incurred in connection with performing official duties and that such reimbursement shall be pursuant to the Board of Control rules applicable to all state employees. Finally, the regulation establishes a procedure for making claims for compensation and reimbursement, and provides

Members of the Commission

P.2

Feb. 22, 1977

that members of the Commission shall not accept honoraria or fees for speeches, public appearances or performing similar services arising primarily out of the member's position on the Commission. This last provision is not required by the Attorney General's opinion but is included in the regulation because it was in the Commission's previous guidelines.

KF:jo

Attachment

For consideration by the Commission on March 1, 2, and 3, 1977. For information or comments, contact Ted Prim, a staff attorney, at (916) 322-5901.

DRAFT 1 TP:plh  
Feb. 22, 1977

PROPOSED REGULATION

18306. Compensation and Reimbursement for Members of the Fair Political Practices Commission (83106).

This regulation defines the circumstances under which members of the Fair Political Practices Commission shall be entitled to compensation and reimbursement in connection with the performance of their official duties.

(a) Compensation.

(1) The Chairman of the Commission shall be compensated at the same rate as the president of the Public Utilities Commission.

(2) Each member of the Commission, other than the Chairman, shall receive \$100.00 for each day during which the member attends all or part of a regular or special meeting of the Commission, a meeting of a committee of the Commission or a hearing conducted by the Commission.

(3) Each member of the Commission, other than the Chairman, shall receive \$12.50 per hour, not to exceed \$100.00 per day, for performing official duties on days other than Commission meeting or hearing days. "Official duties" include: preparing for meetings or hearings of the Commission;

performing activities deemed by the Chairman or Executive Director to be essential to the functioning of the Commission, such as attending meetings, other than Commission meetings, for the purpose of discharging the duties imposed upon the Commission by Government Code Section 83113; and engaging in necessary travel in connection with compensable official duties. "Necessary travel" means time spent away from home between 9:00 a.m. and 5:00 p.m. Monday through Friday as a result of the performance of official duties. Official duties do not include speeches, public appearances, interviews or similar activities.

(b) Reimbursement. Each member of the Commission shall be entitled to reimbursement for travel expenses, incurred in connection with official duties, pursuant to Board of Control regulations applicable to state employees. These expenses include:

(1) per diem expenses, which consist of charges and attendant expenses for meals and lodging and all charges for personal expenses incurred while on travel status;

(2) business telephone and telegram expenses incurred while traveling on official business;

(3) expenses for supplies, including postage, occasioned by an emergency while traveling on

official business; provided, however, that if such expenses exceed \$10.00, they must be approved by the Executive Director; and

(4) expenses for secretarial services occasioned by an emergency while traveling on official business; provided, however, that no reimbursement for secretarial services shall be permitted if such services reasonably could have been performed by a civil service employee.

(c) Claims. Prior to receiving compensation (except the Chairman's compensation) or reimbursement, each member of the Commission shall submit certified vouchers stating the date, number of hours, amount of expenses and the nature of the official duties for which payment is requested.

(d) Honoraria. Members of the Commission shall not accept honoraria or fees for speeches, public appearances, interviews or similar services arising primarily out of the member's position on the Commission.

Copy below is hereby certified to be a true and correct copy of regulations adopted, or amended, or an order of repeal by:

FAIR POLITICAL PRACTICES COMMISSION  
(Agency)

Date of adoption, amendment, or repeal:

March 1, 1977

By: *Daniel H. Lowenstein*

Chairman

(Title)

ENDORSED FILED  
IN THE OFFICE OF

MAR 31 3 42 PM 1977

MARCH FONG EU  
SECRETARY OF STATE  
OF CALIFORNIA

DO NOT WRITE IN THIS SPACE

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ORDER ADOPTING REGULATIONS OF THE  
FAIR POLITICAL PRACTICES COMMISSION

After proceedings had in accordance with the provisions of the Administrative Procedure Act (Government Code Title 2, Div. 3, Part 1, Ch. 4.5) and pursuant to the authority vested by Section 83112 of the Government Code, and to implement, interpret or make specific Section 83106 of the Government Code, the Fair Political Practices Commission hereby adopts its regulation in Division VI, Title 2, California Administrative Code, as follows:

18306. Compensation and Reimbursement for Members of the Fair Political Practices Commission (83106).

This regulation defines the circumstances under which members of the Fair Political Practices Commission, other than the Chairman, shall be entitled to compensation and reimbursement in connection with the performance of their official duties.

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(a) Compensation.

(1) A member of the Commission shall receive \$100.00 for each day during which the member attends all or part of a regular or special meeting of the Commission, a meeting of a committee of the Commission or a hearing conducted by the Commission.

(2) A member of the Commission shall receive \$12.50 per hour, not to exceed \$100.00 per day, for performing official duties on days other than Commission meeting or hearing days. "Official duties" include: preparing for meetings or hearings of the Commission; performing activities deemed by the Chairman and Executive Director to be essential to the functioning of the Commission, such as attending meetings, other than Commission meetings, for the purpose of discharging the duties imposed upon the Commission; and engaging in necessary travel in connection with compensable official duties. "Necessary travel" means time spent away from home between 9:00 a.m. and 5:00 p.m. Monday through Friday as a result of the performance of official duties. Official duties do not include speeches, public appearances or similar activities unless the speech, public appearance or similar activity is authorized in advance by the Commission.

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(b) Reimbursement. A member of the Commission shall be entitled to reimbursement for travel expenses, incurred in connection with official duties, pursuant to Board of Control regulations applicable to state employees. These expenses include:

(1) per diem expenses, which consist of charges and attendant expenses for meals and lodging and all charges for personal expenses incurred while on travel status;

(2) business telephone and telegram expenses incurred while traveling on official business;

(3) expenses for supplies, including postage, occasioned by an emergency while traveling on official business; provided, however, that if such expenses exceed \$10.00, they must be approved by the Executive Director; and

(4) expenses for secretarial services occasioned by an emergency while traveling on official business; provided, however, that no reimbursement for secretarial services shall be permitted if such services reasonably could have been performed by a civil service employee.

(c) Claims. Prior to receiving compensation or reimbursement, a member of the Commission shall submit certified vouchers, stating the date, number of hours, amount of expenses and the nature of the official duties for which payment is requested. Any claim for compensation for preparing for

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meetings or hearings of the Commission which exceeds an amount based on forty hours of preparation during a calendar month shall be subject to approval by the Commission during a regularly scheduled Commission meeting.

\* \* \* \* \*

This regulation will not create any new or increased costs to local government pursuant to Section 2231 of the Revenue and Taxation Code.

DO NOT WRITE IN THIS SPACE

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS  
OF THE FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission, pursuant to the authority vested in it by Section 83112 of the Government Code, to adopt, amend and repeal its rules and regulations to carry out the purposes of the Political Reform Act of 1974, proposes to amend and repeal its regulations in Title 2, Division 6 of the Administrative Code, as follows:

Amend Section 18110. Duties of Filing Officers. This regulation sets forth the duties of filing officers with respect to campaign statements pursuant to Government Code Section 81010. We propose to amend subsection (b) (2) (A) to conform the requirements to the statutory requirements which are set forth in Government Code Section 84211(o).

Repeal Comments to Section 18239. The comments to Section 18239 are explanatory only and merely amplify upon the definitions and requirements of the regulation. Consequently, the Comments are surplusage and are being repealed.

Repeal Section 18306. Compensation and Reimbursement for Members of the Fair Political Practices Commission. This regulation defines the circumstances under which members of the Fair Political Practices Commission are entitled to compensation and reimbursement in connection with the performance of their official duties. We propose to repeal this regulation since it deals exclusively with internal management matters.

Amend Section 18310. Meetings. This regulation implements Government Code Section 83110 which states that meetings of the Fair Political Practices Commission shall be public. We propose to repeal subsection (c) which deals with the notification of Commissioners of meetings since it relates exclusively to internal management matters. A corresponding change is proposed for subsection (f).

Amend Section 18320. Requests for Opinions. This section sets forth the procedure for requesting an opinion from the Fair Political Practices Commission pursuant to Government Code Section 83114. We propose to repeal subsection (c) which provides for the numbering of opinion requests upon receipt since it is solely a matter of internal management.

Amend Section 18322. Procedures for Hearings on Opinion Requests. This section sets forth procedures for Commission hearing of opinion requests. We propose to repeal subsection (a) which requires the Executive Director to send a copy of all opinion requests to the Attorney General since this is solely an internal management matter.

Amend Section 18329. Advice. This regulation sets forth the procedure for requesting written advice from the Fair Political Practices Commission pursuant to Government Code Section 83114(b). We propose to repeal the second sentence of subsection (g) since it is merely repetitive of the statute.

Amend Section 18361. Enforcement Proceedings. This section outlines the course of administrative enforcement proceedings initiated under the Political Reform Act. Two minor

changes are proposed. First, we propose to add a sentence to subsection (d) (3) clarifying what factors the Executive Director considers in determining whether witnesses should be allowed to participate in a probable cause conference. The second change is a clarification of subsection (e) (1) indicating that the Commission requires a party to an enforcement proceeding to provide a copy of any brief to all other parties when the brief is submitted to the Commission. Also we plan to eliminate a reference in subsection (b) to a repealed regulation.

Amend Section 18362. Confidentiality. This section deals with the confidentiality of Commission enforcement files. We propose to repeal subsections (c) and (d) which indicate that the Commission does not intend this Section to supersede or contradict provisions of other laws in this area, and instead to add the words "Except as otherwise provided by law" at the beginning of the first sentence of subsection (b).

Repeal of Comment to Section 18600. The Comment to Section 18600 is explanatory only and merely amplifies upon the provisions of the regulation. Consequently, the Comment is surplusage and is being repealed.

Amend Section 18916. Standards and Guidelines for Auditing Statements and Reports Filed Pursuant to Chapter 4. This regulation sets forth the standards and guidelines for the auditing of campaign statements. We propose to amend this section to clarify that the reference to "other authorized officials" in subsection (c) (1) means the officials which are listed in Government Code Section 90004.

NOTICE IS ALSO GIVEN that any interested person may present statements or arguments orally or in writing relevant to the proposed action at a hearing to be held at the following date and location:

10:30 a.m., November 8, 1982

State Personnel Board  
801 Capitol Mall, Room 150  
Sacramento, California 95814

Written comments should be submitted to the Commission offices by close-of-business on November 8, 1982. The Fair Political Practices Commission, upon its own motion or at the instance of any interested person, may thereafter adopt the above proposals without further notice.

The Fair Political Practices Commission has prepared Statements of Reasons pursuant to Government Code Sections 11346.6 and 11346.7 containing the specific purpose of the proposed amendments and the information relied upon in proposing the amendments.

A copy of the proposed amendments and Statements of Reasons may be obtained from the Commission offices, 1100 K Street, Sacramento, California 95814, telephone (916) 322-5662.

It is anticipated that the above proposals will have no cost to local, state or federal government pursuant to Section 2231 of the Revenue and Taxation Code.

For further information concerning these proposed changes contact Diane Maura Fishburn, of the Legal Division, at (916) 322-5901.

Dated: 9-17-82

FAIR POLITICAL PRACTICES COMMISSION



Tom K. Houston, Chairman

# Memorandum

To : Commissioners Stanford, Conrad,  
Lemons, Metzger and Ziffren

Date : May 23, 1983

From : FAIR POLITICAL PRACTICES COMMISSION  
Janis Shank McLean

Subject: Regulations

The staff proposes that the following regulations be amended or repealed. The full texts of the suggested changes are attached and the following is a summary of the changes:

Section 18110(b)(2)(A):

This proposed amendment requires a filing officer, while reviewing a committee's campaign statement, to check that the name, street address and phone number of the committee's treasurer has been disclosed.

Section 18239 (Comments):

It is proposed that the comments to Section 18239 be repealed. The comments are explanatory only and merely amplify upon the definitions and requirements of the regulation.

Section 18306:

This regulation defines the circumstances under which members of the Fair Political Practices Commission are entitled to compensation and reimbursement in connection with the performance of their official duties. Because this regulation deals solely with internal management matters, it should be repealed.

Section 18310(c) and (f):

This regulation implements Government Code Section 83110 which states that meetings of the Fair Political Practices Commission shall be public. One of the proposed changes repeals subsection (c) which deals with the notification of Commissioners of meetings since it relates exclusively to internal management matters. A corresponding change is proposed for subsection (f).



Section 18320(c):

This section sets forth the procedure for requesting an opinion from the Fair Political Practices Commission pursuant to Government Code Section 83114. The proposed change repeals subsection (c) which provides for the numbering of opinion requests upon receipt since it is solely a matter of internal management.

Section 18322(a):

This section sets forth procedures for the Commission's hearing of opinion requests. The proposed change repeals subsection (a) which requires the Executive Director to send a copy of all opinion requests to the Attorney General since this is solely an internal management matter.

Section 18329(g):

This regulation sets forth the procedure for requesting written advice from the Fair Political Practices Commission pursuant to Government Code Section 83114(b). The proposed change repeals the second sentence of subsection (g) since it is merely repetitive of the statute.

Section 18361(b), (d)(3) and (e)(1):

This section outlines the course of administrative enforcement proceedings initiated under the Political Reform Act. Two minor changes are proposed. First, it is proposed that a sentence be added to subsection (d)(3) to clarify what factors the Executive Director considers in determining whether witnesses should be allowed to participate in a probable cause conference. A second proposed change clarifies subsection (e)(1) by requiring a party to an enforcement proceeding who submits a brief to the Commission to provide a copy of the brief to all other parties. Finally, a proposed change eliminates a reference in subsection (b) to a repealed regulation.

Section 18362(b), (c) and (d):

This section deals with the confidentiality of Commission enforcement files. The proposed changes repeal subsections (c) and (d) which indicate that the Commission does not intend this section to supersede or contradict provisions of other laws in

Commissioners Stanford, Conrad,  
Lemons, Metzger and Ziffren  
May 23, 1983  
Page 3

this area, and instead add the words "Except as otherwise provided by law" at the beginning of the first sentence of subsection (b).

Section 18600 (Comment):

It is proposed that the comments to Section 18239 be repealed. The comment is explanatory only and merely amplifies upon the provisions of the regulation.

Section 18916(c)(1):

This regulation sets forth the standards and guidelines for the auditing of campaign statements. The proposed change amends this section to clarify that the reference to "other authorized officials" in subsection (c)(1) means the officials which are listed in Government Code Section 90004.

## **Attachment C**

## Pennie Conroy

---

**From:** Tina Bass  
**Sent:** Thursday, November 17, 2011 9:23 AM  
**To:** Pennie Conroy; Zita Hirsch  
**Subject:** FW: Reimbursement by the FPPC

**Follow Up Flag:** Follow up  
**Flag Status:** Completed

Fyi regarding Commissioner compensation.

Tina Z. Bass  
Chief of Administration  
Fair Political Practices Commission  
(916) 322-5660

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-----Original Message-----

**From:** Ann Ravel [mailto:ann.ravel@gmail.com]  
**Sent:** Thursday, November 17, 2011 3:30 AM  
**To:** Sean.eskovitz@mto.com; Elizabeth Garrett; Lynn Montgomery; Ron Rotunda  
**Cc:** Tina Bass  
**Subject:** Reimbursement by the FPPC

Dear Commissioners:

As I have mentioned to you before, the FPPC budget situation is very dire. Administrative actions taken before my tenure were unfunded liabilities, and together with the State budget cuts and the unexpected payout of excessive accumulated leave time of the Executive Director, we are now left with a mere \$12,000 over our ongoing costs for rent and salaries, etc. for the remainder of the fiscal year. In response to this situation, we have been examining all expenditures to find places to save. I have eliminated all cell phones, all but the most necessary travel, and we are unfortunately talking about potential layoffs. Yesterday I sent a letter to the Department of Finance requesting a budget augmentation.

It recently came to my attention that Chair Johnson had changed a policy to augment payments to Commissioners for meeting preparation and travel time. (in addition to the regular Statutory payments for attendance at meetings and reimbursement for travel expense). I have reviewed the reimbursement requests submitted by Commissioners over the last year, and it appears that in general the Commissioners need one day of preparation time for the meetings.

While I recognize the sacrifices you are already making in devoting time to the Commission, I believe that I must reduce the amount of time to be reimbursed to one day of preparation time per meeting at the same rate of \$100, and no reimbursement for travel time. If you have extraordinary circumstances requiring more preparation, please let me know in advance and reimbursement will be made up to 3 days at the same rate if it is appropriate.

I regret that the FPPC has been placed in this unfortunate fiscal situation requiring us to take extreme measures so that we can continue to perform our core responsibilities. But I am sure that you will agree that my goal of preventing layoffs is most important. Thank you.