

HONORARIUM BAN

An elected officer of a state or local government agency shall not accept any honorarium.

(Section 89502(a).)

A candidate for elective state office, for judicial office, or for elective office in a local government agency shall not accept any honorarium.

(Section 89502(b)(1).)

A member of a state board or commission or designated employee of a state or local government agency shall not accept an honorarium from any source *if the member or employee would be required to report the receipt of income or gifts from that source on the member's or employee's statement of economic interests.*

(Section 89502(c).)

Honorarium-defined by statute

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.**

(Section 89501(a).)

Honorarium-defined by statute, cont'd

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.

(Section 89501(b)(1).)

Definition of “Speech Given”

Regulation 18931.1: “speech given” means “a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate.”

It does not include a comedic, dramatic, musical, or other similar artistic performance.

Exceptions to “Honorarium:” Earned Income.

Regulation 18932(a):

- (a) “Honorarium” does not include **income earned for 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(d):

A business whose predominant activity is making speeches **is not “bona fide”** for purposes of Government Code Sections 89501 through 89506

Definition of Predominant Activity

Regulation 18932.3(a):

The “predominant activity” of a business in existence for one year or more is presumed to be speechmaking if during the 12-month period prior to and including the date of the speech, **more than 50 percent** of the **hours** spent on the business is devoted to, or **more than 50 percent** of the **gross income** of the business is derived from, the preparation and/or delivery of speeches.

Comments/Questions

As proposed, Regulation 18932.3 adopts an additional arbitrary time threshold that wouldn't allow an author to, for example, continue to promote a very successful book as long as they can – even beyond the 36 months outlined in the regulation. -California Political Attorneys Association, June 12, 2024

Response: The 36-month period is a look-back, which includes the hours and gross income anticipated for the speech in question, to determine if the predominant activity of the business, trade or profession is “making speeches.” An elected official would be able to promote the book so long as the gross income and hours for making speeches is not more than 50% of the gross income/hours for the business, trade or profession.

Could a regulation exclude “speeches paid for by persons or entities that have no business in the public official’s jurisdiction [from the definition speech]?” -California Political Attorneys Association, June 12, 2024

Response: No. There is no statutory authority to exclude a type of speech from the definition of “speech” based on who is making the payments or the relationship to the elected official’s duties. Section 89502(c) specifically bans honorarium based on the source of the payment for board members, commission members and designated employees of a state or local government agency. To try to extend the limitation of the ban in Section 89502(c) to elected officials (who have a full honorarium ban from any source) in Section 89502(a) would not be a permissible “interpretation”- it would fly in the face of the statute.

Cont'd

Can the Commission define the “earned income” exception found in FPPC Regulation 18932 to exclude personal services from a business, trade, or profession that involves a proprietary item created, in full or part, by the individual? [Is this] consistent with the Halderman and Donald Advice Letters [?] Winuk Letter, June 11, 2024.

Response: No. There is no statutory authority to define the earned income exception to allow for payments for personal services where there is a proprietary item involved, for the purpose of allowing that a business, trade or profession may have the sole or predominant activity of making speeches. This would be in direct contradiction to Section 89501(b)(1).

Section 89501(b)(1):

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.

Cont'd

Can the Commission exclude from the definition of “speech given” in FPPC Regulation 18932 presentations or talks given in connection with a bona-fide, pre-existing business, where compensation is received for presentations on subjects in which the public official had offered compensated presentations prior to election to office. [Is this consistent with the Kahn and Ricci Advice Letters[?]]
Winuk Letter, June 11, 2024.

Response: No. This would allow elected officials to receive honorarium payments even where the business’s sole or predominant activity is making speeches. As the Commission noted in the June 2023 meeting, the honorarium ban was directed at elected officials who were giving speeches and receiving payment within the law at the time, as well as those elected officials who were accepting payments from interested parties.

There is no statutory authority to exclude a type of speech from the definition of “speech given” based on the longevity of the business, or its existence prior to running for elective office.



Proposed Regulation 18932.3

A comparison in application



Presentation: Commission Meeting June 13, 2024

Earned Income Exception

(Section 89501(b)(1).

Payments for the following are “earned income” and do not meet the definition of “honorarium:”

Must meet all of the (4) criteria:

- (1) Personal services,
- (2) Customarily provided in connection with
- (3) The practice of a bona fide business, trade, or profession,
- (4) **Unless the sole or predominant activity** of the business, trade, or profession is **making speeches.**

To qualify for the exception, one must determine the “predominant activity” of the business under Reg. 18932.3

Comparison:

The “predominant activity” is making speeches if:

Under Reg. 18932.2: During the 12-month period prior to and including the date of the speech more than 50 percent of the hours or gross income of the individual's business, trade, or profession is derived from the preparation and/or delivery of speeches.

Under Proposed Reg. 18932.2: More than 50 percent of the gross income is related to the delivery of speeches in the 36-month period prior to and including the date of the speech.



Example: Gross Income* Facts

Facts: Jane Doe is an established author running for office as of January 2024.

- ◆ In **January 2022**, she signed a book deal for a new book and received a \$40,000 advance. Total income: \$40,000.
- ◆ In **2023**, she published the book and received \$24,000 in royalties (roughly \$2,000 per month) and another \$16,000 for eight speaking events (\$2,000 per event). Total income: \$40,000.
- ◆ In **January 2024** she wishes to be paid \$10,000 for a speaking event publicizing her book.

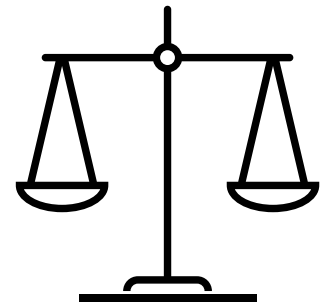
*Note: the business's hours would be considered as well. Today, we are only looking at the gross income for the example comparison.

Question: Is her business's predominant activity making speeches under **current Reg. 18932.3**?

Yes, the predominant activity is speechmaking.

- In the past **12** months:
- **2023**: \$24,000 in royalties and \$16,000 in speaking fees=**\$40,000**
- With the **\$10,000** for this speech event:
 - Total income for the business including speech event: **\$50,000**
 - Total income from making speeches:**\$26,000**, **more than 50%** of Total income of **\$50,000** in the past 12 months is from making speeches.

The payment is a prohibited honorarium.



Question: Is her business's predominant activity making speeches under proposed Reg. 18932.3?

No, the predominant activity is *not* speechmaking.

- In the past **36** months :
 - **2022: \$40,000** advance, and in **2023: \$40,000** (\$24,000 in royalties and \$16,000 in speaking fees)=**\$80,000**.
 - With the **\$10,000 for this speech event:**
 - Total income for the business, including the speech event: **\$90,000**
 - Total income from making speeches: **\$26,000** is less than **50%** of the Total income of **\$90,000** in the past 36 months
 - **The payment is not prohibited honorarium. It is earned income.**



Questions?

Presentation: Commission Meeting June 13, 2024