

MEMORANDUM OF LAW

DATE: November 29, 1994

TO: Councilmember George Stevens

FROM: City Attorney

SUBJECT: Effect of New Legislation on Acceptance of Honoraria
Received in Your Capacity as a Minister

At the Rules Committee meeting on November 21, 1994, you asked the City Attorney John W. Witt for an opinion on the effect of new legislation on your ability to accept honoraria for services you render in your capacity as a minister. Mr. Witt asked me to respond to your request.

The new legislation you mention amends Government Code section 89501 to prohibit local elected officials and designated employees from accepting gifts over \$270F

The new statute provides for a \$250 gift limit in any calendar year, to be adjusted to make it equal to the prevailing gift limitation amount applicable to elected state officers in effect on January 1, 1995, which will be \$270 until adjusted by the Commission. This gift limit will be adjusted biennially.
from a single source in a calendar year and
to prohibit them from accepting honoraria altogether. This limitation on gifts and ban on honoraria had existed previously for state officials, but will become effective as to local elected officials when the new legislation takes effect on January 1, 1995.F

The legislation was formerly Assembly Bill 1542 and was adopted by the government on April 7, 1994. 1994 Cal. Stat. ch.36. As amended, Government Code section 89501 reads:

(a) No local elected officeholders, elected or appointed member of the governing board of a special district, or designated employee of a local government agency shall accept any honorarium, as defined in subdivisions (b), (c), and (e) of Section 89502.

(b) No local elected officeholder, elected or appointed member of the governing board of a special district, or designated employee of a local government agency shall accept any gifts, from any single source, which is in excess of two hundred fifty dollars (\$250), in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith. The commission shall adjust this gift limitation to make it equal to the prevailing gift limitation

amount applicable to elected state officers in effect on January 1, 1995, and thereafter shall adjust this gift limit at the same time and in the same amount as the gift limit applicable to elected state officers is adjusted pursuant to subdivision (d) of Section 89504.

A recent informal assistance letter from the Fair Political Practices Commission ("FPPC") explains very well the application of the new legislation. Inf. Assist. Ltr. I-94-243 (Aug. 25, 1994). A copy of that informal assistance letter is attached for your reference. As noted in that letter, specifically excluded from the definition of "honoraria" is earned income for providing personal services, if those services are customarily provided in connection with a bona fide business, trade, or profession and if the sole or predominant activity of the business, trade, or profession is not making speeches. Government Code section 89502(c). "Earned income" means income from wages, salaries, professional fees, and other amounts received or promised to be received as compensation for personal services rendered. Government Code section 82030.5; 2 Cal. Code of Regs. section 18932. A non-profit entity, such as a church, is a "business" for purposes of the exception in Government Code section 89502(c). 2 Cal. Code of Regs. section 18932(b).

Construing a statute similar to Government Code section 89501 that applies to state officials and employees, the FPPC recently opined to Senator Boatwright that one of his legislative staff members who was employed as an ordained minister prior to being hired by the Legislature could accept payment for continuing his ministry and conducting church services after his date of hire by the Legislature. Priv. Adv. Ltr. A-93-323 (Sept. 2, 1993). A copy of that private advice letter is also attached.

Based upon the above cited statutes and regulations and consistent with the private advice letter to Senator Boatwright, I conclude that it is permissible for you to receive payments for continuing your ministry and conducting church services while you are seated on the City Council.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:011(x043.2)

Attachment

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