



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 7, 2023

Gary S. Winuk
Kaufman Legal Group
City of Palo Alto
621 Capitol Mall, Suite 1900
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-23-009

Dear Mr. Winuk:

This letter responds to your request for advice on behalf of Palo Alto City Council Member Julie Lythcott-Haims regarding the honorarium provisions of the Political Reform Act (the “Act”).¹

Because your inquiry is general in nature, we are treating your request as one for informal assistance.² Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Does the Act’s prohibition on acceptance of honoraria prohibit City Council Member Lythcott-Haims from accepting consideration for activities in relation to her business, Love Over Time, LLC?

CONCLUSION

As the facts establish, City Council Member Lythcott-Haims has a business based on her expertise as a writer and thought-leader in relation to topics such as parenting, race, identity, and youth thriving that has been in operation well before her becoming a candidate and elected official. Accordingly, she may continue to receive compensation for book writing and articles in regard to

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

her areas of expertise. Moving forward, she will only be able to receive compensation for speeches and other public talks so long as speech making is not the predominate activity of her business. More specifically, she may not receive compensation for a speaking engagement until her business' income for speechmaking drops to 50 percent or below for the 12 months prior to the speaking engagement, and the hours devoted to speech making is less than 50 percent of her business hours. (Regulation 18932.3.) Additionally, she may not receive compensation for teaching unless it meets the regulatory requirements for the "bona fide profession of teaching" as outlined below.

FACTS AS PRESENTED BY REQUESTER

Julie Lythcott-Haims is an international and nationally prominent author, writer, thought leader, and educator. She holds degrees from Stanford University, Harvard Law School and a master's degree in Fine Arts (Writing) from the California College of the Arts. She is a former Dean at Stanford University. In 2013, she received her first contract for the development of a book with Henry Holt and Company.

Over the next seven years she developed other literary works and engaged in a rigorous promotional and touring schedule. Throughout this time, Ms. Lythcott-Haims developed herself into a national and international literary figure. Through her experience and her published works, she has become a consultant and expert on topics related to parenting, race, identity, and youth thriving. All the activities in which she engages are for the purpose of developing and promoting her literary career, including: developing, researching and writing her books; promoting her books through book talks and workshops; writing articles; writing book reviews; mentoring other writers; and teaching.

During 2021 she established a California corporation, Love Over Time, LLC ("LLC"). Ms. Lythcott-Haims, as reflected in her LLC, considers herself a writer and author, and all activities, paid or otherwise, are done in furtherance of this business activity. The LLC has maintained books and records of accounting for two calendar years and has copies of tax returns filed in connection with the operation of the business.

Over the past year, Ms. Lythcott-Haims conducted 37 promotional book talks and workshops, some of which were in-person and some of which were online. Approximately 15% of these book talks and workshops were uncompensated. In 2022, her LLC also received foreign and domestic royalties from books, income from weekly writing for Meta, and income from writing a book review for the Washington Post. She also received income from teaching an online course, which you explained in a telephone conversation in response to our questions, does not meet the requirements for teaching at an accredited institution or for continuing education requirements for specific professions. Finally, she spent a significant portion of her time developing ideas for her fourth book.

In 2022, Ms. Lythcott-Haims spent well less than fifty percent of her time promoting her books through book talks and workshops, whether paid or unpaid. Over the same time period, more than fifty percent of the income to her LLC came from paid book talks and workshops. Other income includes advances from her publisher for book development, royalty payments on her first

book, both foreign and domestic, contractual payments for digital articles, and income from other activities related to her literary business, such as teaching and literary criticism.

Ms. Lythcott-Haims was elected to the Palo Alto City Council in November 2022. In regard to her personal business, she will not accept any income from any business, person or entity either located in or doing business in the City of Palo Alto. Additionally, her books, promotional book talks and workshops, articles and other compensated activities are solely related to her published work topics.

ANALYSIS

Section 89502(a) specifies that an elected officer of a local government agency shall not accept any honorarium. An “honorarium” is defined as “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 does not include income from personal services provided as part of a bona fide business, trade, or profession, unless speechmaking is a predominant activity of that business, trade, or profession. Section 89501(b) provides that the term honorarium does not include:

(1) Earned income for personal services which are customarily provided in connection with the practice of a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, unless the sole or predominant activity of the business, trade, or profession is making speeches. The Commission shall adopt regulations to implement this subdivision.

Interpreting the earned income exception found in Section 89501(b)(1), Regulation 18932(a) provides as follows:

(a) “Honorarium” does not include income earned from personal services if:

(1) The services are provided in connection with an individual’s business or the individual’s practice of or employment in a bona fide business, trade, or profession, such as teaching, practicing law, medicine, insurance, real estate, banking, or building contracting, pursuant to California Code of Regulations, Title 2, Sections 18932.1 through 18932.3; and

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

Regulation 18932.1(a) specifies that a business is presumed to be “bona fide” if the owner has maintained the following documents for the two calendar years immediately preceding the year in which the consideration for the payment was provided:

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

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

However, Regulation 18932.1(d) states that “[a] business whose predominant activity is making speeches is not “bona fide” for purposes of Government Code Sections 89501 through 89506.” Regulation 18932.3(a) then provides that 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.

Love Over Time, LLC

It is established by the facts that before becoming a public official Council Member Lythcott-Haims had a legitimate business pursuing various endeavors related to her unique areas of expertise. While some of these endeavors would not have qualified as a “bona fide” business entity for purposes of the Act’s honorarium ban due to the amount of income received for public speaking engagements at the time the work was performed, the Act only ensures that an official does not receive improper honorarium. It does not preclude the official from engaging in a legitimate business activity as a public official so long as the business qualifies as a bona fide business upon taking office and moving forward.

In regard to this determination, Council Member Lythcott-Haims received her first contract to develop a book in 2003 and over the next 10 years has developed herself into a national and international literary figure. Through her experience and her published works, she has become a consultant and expert on topics related to parenting, race, identity, and youth thriving. Based on these facts, it is clear that the Council Member is a subject matter expert in her areas of expertise and that she has operated a legitimate business pursuing various endeavors for many years. To the extent that the business continues permissible activities while ensuring the business does not receive income from speaking engagements until such time that the business meets the threshold in Regulation, Council Member Lythcott-Haims’ business will be considered a bona fide business for future activity. Accordingly, the business can move forward writing books and articles. However, we caution that Council Member Lythcott-Haims may not accept payment for any public speaking engagement, including the courses currently being taught online³, if income from speaking

³ There is an exception to the honorarium ban for those engaged in the bona fide profession of teaching. In relevant part, Regulation 18932.2 provides an exception where:

- (a) The individual is under contract or employed to teach at a school, college, or university accredited approved or authorized as an educational institution by an agency of the State of California; or by an agency of any other state in the United States; or by an agency of the Federal government; or by a bona fide independent accrediting organization.
- (b) The individual receives payment for teaching a course, presented to assist in maintenance or improvement of professional skills or knowledge where the course provides credit toward continuing education requirements of the pertinent profession.

engagements exceeds 50 percent of the business's income in the 12 months prior to the speaking engagement. Nor may she accept payment for any public speaking engagement if more than 50 percent of the hours spent on the business is devoted to the preparation and/or delivery of speeches prior to the speaking engagement.

Accordingly, so long as she is an official, the Act will prohibit the Council Member from accepting any further payments for a particular speaking engagement until payments for nonspeaking engagements in the prior 12 months exceed the payments received for speaking engagements, and the hours devoted to speech making is less than 50 percent of her business hours.

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

Sincerely,

Dave Bainbridge
General Counsel

Brian G. Lau

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By: Brian G. Lau
Assistant General Counsel

The facts provided indicate that in the past year the Council Member has received income from "teaching an online course." Should her activities meet the requirements of the regulation, payment for teaching would be permitted as an exception to the honorarium ban.