



Board of Directors  
Rainbow Chamber of Commerce, Silicon Valley  
1070 Stewart Drive, Suite 1  
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June 12, 2017

Diane Eisenberg  
Deputy Attorney General  
455 Golden Gate Avenue, Suite 11000  
San Francisco, CA 94102-7004

Re: Request for Comments on Attorney General's Opinion 17-108

Dear Ms. Eisenberg,

We have received your request for comments regarding a request made by Assemblyman Matthew Harper for an opinion by the Attorney General on the following question:

Do the provisions of Government Code section 11139.8, which generally prohibits state-funded or state-sponsored travel to states that have enacted specified discriminatory laws, apply to team coaches, medical doctors, athletic trainers, and other employees of the athletic departments of the University of California and the California State University system?

The Policy Committee of the Rainbow Chamber of Commerce has reviewed this question, the statute, the legislative history, and commentary from members of the legislature at the time of the laws passage. **We are of the opinion that Section 11139.8 of the Government Code DOES apply to team coaches, medical doctors, athletic trainers, and other employees of the athletic departments of the University of California and the California State University system.** We state our reasoning in its entirety below.

The Statute is Clear and Unambiguous

Section 11139.8(b) of the Government Code (hereafter, the "Statute") states, in relevant part:

"A state agency, department, board, authority, or commission, including an agency, *department*, board, authority, or commission of the University of California, the Board of Regents of the University of California, or the California State University, and the Legislature shall not do either of the following: ... (2) Approve a request for state-funded or state-sponsored travel to a state that ... has enacted a law that authorizes or requires discrimination against same-sex couples or their families or on the basis of sexual orientation, gender identity, or gender expression..."

The emphasized language makes plain that the statute applies equally to employees of state agencies, departments, boards, authorities, commissions *and* departments of the University of California and the California State University systems. It is undeniable that the relevant athletic department is a department of the University of California or California State University system. To the extent, therefore, that coaches and other athletic staff are employed by the athletic department of a state college or university, the statute clearly applies to their travel. This language is clear and unambiguous.

Furthermore, the legislative history makes clear that the legislature was fully aware that the law would have particularly acute consequences for the University of California and California State University system. The March 15, 2016 Analysis from the Assembly Judiciary Committee includes a concern regarding whether applying the Statute to a professor might not be counter-productive. Despite this concern, the legislature did not remove the language including the UC and CSU systems within its scope. This suggests that it was always the intension of the legislature that the statute should be applies to UC and CSU employees, even when doing so might seem unfair or counter-productive to some.

#### Athletic Department Travel Does Not Automatically Fall Into the Statutory Exceptions

The Statute enumerates seven exceptions to the rule. To the extent that the travel contemplated by athletic department staff meets the qualifications for one of these exceptions, then their travel should be exempt from the law's application. For example, we recognize that the National Collegiate Athletic Association (NCAA) awards numerous grants and scholarships both to the University and to individual students. To the extent that travel and attendance at games or tournaments is required in order to maintain these scholarships and grants, we are of the opinion that this would fall within the scope of section (c)(5) of the statute.

That being said, we find no justification under the enumerated exceptions, including section (c)(5), for exempting *all* travel by the department or its staff from the general rule. If clarification is desirable as to when specific travel should be exempt in order to maintain access to scholarships and grants, the Attorney General should conduct a review of what travel is mandated by the NCAA and issue corresponding guidance for the departments. A blanket exemption, however, would clearly be inappropriate, as not all games, matches, or tournaments are mandated by the NCAA, and schools have wide latitude to control the schedules for their teams.

#### Creating a New Exception for Athletic Department Employees Would be Contrary to the Purposes of the Statute

A blanket exemption for athletic departments would be contrary to the purposes of the Statute. The legislative history offers two purposes for which the statute was passed: (1) to prevent an employee from being "compelled" to travel to an environment where their rights may not be respected; and (2) to prevent "the use of state funds to benefit a state that does not respect the civil rights" of their citizens (*see* Analysis of the Assembly

Judiciary Committee, March 15, 2016). Exempting University athletic departments from the Statute would serve neither of these purposes.

It should go without saying that athletic staff of California's universities are a diverse group of people, and, in all likelihood, include persons who, either openly or not, identify as LGBT. If it is determined that the Statute does not apply to these persons, then some of these LGBT-identified staff members may be compelled to attend games in states where their rights are not respected. This is plainly a violation of the purpose for which this statute was enacted. Furthermore, the danger to the health and safety of the University's athletic staff is greater for those staff members who may not be "out of the closet" or openly identify as LGBT. These staff members already face far greater psychological strain, which could be compounded by acts of discrimination, or worse, being "outed" to their colleagues.

The second purpose is also not served by exemption athletic departments from the Statute. The key consideration is whether the use of funds would "benefit" the state. A 2007 study by economists at the College of Holy Cross found that a single home football game can increase local taxable sales by as much as \$3 million (*see* Baade, Bauman & Matheson, *Big Men on Campus*, Paper No. 07-04, 2007, *available at* [http://web.holycross.edu/RePEc/hcx/HC0704-Matheson-Baade-Baumann\\_CollegeSports.pdf](http://web.holycross.edu/RePEc/hcx/HC0704-Matheson-Baade-Baumann_CollegeSports.pdf)). The basketball tournaments have an even more direct benefit to their states, as schools that participate reap large sums. The University of North Carolina, for example, which resides in a state covered by the Statute, made more than \$8 million for making it to the tournament in 2017. Athletic department travel to these states can have an enormous economic impact, perhaps even the largest economic impact of any state-sponsored travel. For this reason, it would be particularly destructive to the purpose of the Statute to create an exception for athletic departments. Given the prowess of California's athletic teams, such an exception would no doubt create such an enormous economic benefit to the target state that it would completely undermine the Statute.

#### Even If a New Exception Were Desirable, Legislative Action Would be Required

If a new exception for athletic departments is desirable, which we do not believe it is, then it should be up to the legislature to pass an appropriate amendment to the Statute. We are of the opinion that the Attorney General should not issue an interpretation that would have the practical effect of altering the clear and unambiguous text or undermining the clearly defined purpose of the Statute. We respectfully submit that such a dramatic rewriting of the statute should be left to the legislature, not the Attorney General.

Based on the above, it is the conclusion of the Rainbow Chamber of Commerce, and the Policy Committee thereof, that Section 11139.8 of the Government Code, which, in relevant part, prohibits the use of state funds for travel to states that discriminate against LGBT persons, **does apply** to athletic departments and the athletic staff of the University of California and California State University systems.

If you have further questions please feel free to contact Roark Clayton, President of the Rainbow Chamber of Commerce, at [roark@rainbowchamber.org](mailto:roark@rainbowchamber.org), or Michael Vargas, Policy Committee Chair, at [michael.vargas@rimonlaw.com](mailto:michael.vargas@rimonlaw.com).

Thank you for your attention.

Sincerely,

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