



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 22, 2023

Vyckie Lee
County Supervisor Sue Frost,
District 4, Sacramento County
700 H Street, Room 2450
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-23-146

Dear Ms. Lee:

This letter responds to your request for advice on behalf of Sacramento County Supervisor Sue Frost regarding the income, gift, and honorarium provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the above provisions of the Act and not under any other bodies of law.

Also 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. Lastly, the Commission does not provide advice with respect to past conduct. Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained in this letter apply only to prospective actions.

QUESTION

Under the Act, is County Supervisor Sue Frost required to report the credit for membership from the Orangevale Chamber of Commerce, given in recognition of her service in the community attending events on her Statement of Economic Interest (SEI) where she was unaware of the membership, did not use the membership benefits and requested it be rescinded upon learning of the credit in the June 16, 2023, notice from the Chamber?

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.

CONCLUSION

No. Because Supervisor Frost was unaware of the membership credit in the June 16, 2023 notice, did not use the membership benefits, and returned the membership immediately upon learning of it, the credit is not income, a gift, or prohibited honorarium. Accordingly, the June 16, 2023, credit, need not be reported on her annual SEI.

FACTS AS PRESENTED BY REQUESTER²

On June 16, 2023, Sacramento County (“County”) Supervisor Sue Frost received a statement entitled “Credit Note” for a \$230 amount from the Orangevale Chamber of Commerce (“Chamber”). Upon receipt of the statement, Supervisor Frost’s office requested the Chamber explain the purpose of this credit note and was informed it was intended to cover Chamber membership dues.³ According to the Chamber, the credit note was made to recognize Supervisor Frost’s involvement in various County-sponsored and community events. You explained that “County-sponsored events” are non-profit agency activities while “community events” include ribbon-cutting ceremonies, proclamations, and special guest appearances which are non-monetary in value. The credit amount was intended as an honorary membership fee in acknowledgment of Supervisor Frost’s consistent participation in these events.

Chamber membership entails participating in Chamber events, networking, receiving newsletters, and being on their mailing list. Supervisor Frost has not engaged in any events that have not been sponsored by the County and, therefore, believes she should not be part of the Chamber membership and does not have a need of it. You confirmed by phone that Supervisor Frost asked the Chamber to cancel the honorary membership the same day she received the note, June 16, 2023, and the membership was deactivated.

You provided the following additional information in a phone conversation on October 12, 2023: in regard to her past appearances at the County-sponsored and community events, Supervisor Frost did not receive any payments for, nor was any sum assigned to the value of these appearances, nor was there an expectation that Supervisor Frost would participate in any specific number of these appearances. Additionally, you confirmed by email that your office learned that the Chamber made Supervisor Frost a member in the past, but never sent a notice to the Supervisor alerting her to this “credit” until this year (you clarified that the Chamber did this in at least one previous year but it is unclear how many times they did this as the Supervisor was not aware it was occurring until the credit note arrived at her office). As such, she was not aware of her honorary membership until she received the credit note and followed up with the Chamber in June. She has never used any benefit resulting from being a member of the Chamber.

² We note that the original information in the request for advice had inconsistencies and the above facts were confirmed by Supervisor Frost.

³ In your request, you note that according to the Chamber the credit was incorrectly put into the Chamber’s system as a “trade” due to an accounting error, and that the credit was not provided as a trade for any specific service.

Supervisor Frost seeks advice as to whether she needs to report the \$230 credit from the June 16, 2023, statement on her annual SEI and, if so, how she should designate the credit.

ANALYSIS

The Act regulates payments to elected officials by establishing reporting requirements for gifts and income and prohibiting officials from accepting payments that are honorarium. To determine Supervisor Frost's obligations under the Act, including whether she must report the payment, it must first be determined how the June 16, 2023, \$230 credit⁴ is characterized and whether it was "returned" under the Act.

Honoraria

Section 89502(a) specifies that an elected officer of a local government agency shall not accept any honorarium. As a County Supervisor, Supervisor Frost is an elected local official, and the prohibition applies to her. 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).) We have advised that consideration offered for the totality of an official's services rather than for a particular event does not rise to an "honorarium." (See for example, *Diep* Advice Letter No. A-18-018 [a stipend in exchange for participation in a local foundation was not considered honoraria because the compensation was for the totality of the official's services, over the course of the year, not for attending any one meeting, social event, meal, or like gathering.].) Additionally, the term "honorarium" does not include "any honorarium which is not used and, within 30 days after receipt is ... returned to the donor." (Section 89501(b)(2).)

Here, according to the facts provided, the credit was provided in recognition of her general participation in community events. While we caution that the payment could be a prohibited honorarium to the extent that the payment was provided primarily for attending particular events, it is unnecessary to further analyze the purpose of the specific payment in question in light of the fact that the payment was returned. In this case, the facts provided indicate that the credit was not used and was immediately returned upon notice of the payment. Based upon these facts, the payment was returned within the 30-day time period, once the Supervisor was aware of the Chamber's credit, and it is therefore not an "honorarium" under Section 89501(b)(2).

Gift/Income

Section 82030 generally defines "income" as a payment received, including but not limited to any salary, wage, advance, gift, reimbursement for expenses or per diem. Section 82028 defines a "gift" as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received." A "gift" also includes "a rebate or discount

⁴ The facts state that there may have been past membership credits from the Chamber to Supervisor Frost. We do not analyze any past credits for Chamber membership as to whether those credits would meet the definition of a prohibited honorarium or the definition of a reportable gift or income as we do not provide advice on past conduct, nor do we have facts regarding any past credits.

in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.” (Section 82028(a).)

The Act places the burden on the official to show that the official provided consideration of equal or greater value in return for the payment, and if such consideration is provided, then the payment is not a gift, but considered income. Equal consideration means that each party receives benefits of equal value. (*In re Burciaga* (1975) 2 FPPC Ops. 17.) Because Supervisor Frost states she was unaware of the Chamber’s membership credit, it cannot be said that her appearances offered consideration for the membership credit, and the credit does not meet the definition of “income.”

Further, a “gift” does not include “[g]ifts which are not used and which, within 30 days after receipt, are ... returned to the donor.” (Section 82028(b)(2).) Regulation 18941 provides the requirements for the “return of a gift” and states that “a gift is neither accepted nor received if, within 30 days ... [t]he gift is returned to the donor ... unused and without receiving anything of value in exchange for the returned payment.” (Regulation 18941(c)(1).)

Here, Supervisor Frost indicates that she had no knowledge of her honorary membership until receiving the credit note, which was her first notice that she was extended an honorary membership by the Chamber and that the value of the membership was \$230. On the same day she received notice of the credit, Supervisor Frost immediately contacted the Chamber to ask them to cancel the membership thereby returning the potential gift. Moreover, the facts indicate that Supervisor Frost did not receive any benefits under the membership. Accordingly, because the membership was returned the same day she had knowledge of it, and prior to receiving any benefit, the membership was returned within 30 days and does not meet the definition of a “gift” under Section 82028(b)(2) and Regulation 18941(c)(1).

Reporting Requirements

Under the Act, payments to public officials that are “gifts” must be reported, are subject to limits, and may create a conflict of interest in a decision. A gift must be reported if it is valued at \$50 or more from a single source in a calendar year. (Section 87207.) The annual gift limit for 2023 is \$590. (Regulation 18940.2.) Further, the Act prohibits any public official from making, participating in making, or using the official’s position to influence the outcome of a governmental decision that would have a reasonably foreseeable material financial effect upon the donor of a gift or gifts with an aggregate value of \$590 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18702.4.)

As noted above, Supervisor Frost returned the membership credit gift unused and within 30 days, so she is not subject to the above requirements. The returned, unused membership credit need not be reported on her annual SEI form, as it is not a “gift.”

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

Sincerely,

Dave Bainbridge
General Counsel

By: 
Valerie Nuding
Counsel, Legal Division

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