

State of California



Fair Political Practices Commission

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May 15, 1984

J. Du Wayne Dickson
Planning Commissioner
City of Campbell
925 Bucknam Avenue
Campbell, CA 95008

Re: Our Advice No. A-84-090

Dear Mr. Dickson:

The Chairman has asked me to respond to your letter, which poses mostly policy and informational questions rather than specifically requesting the Commission's advice.

During past years, you have received gift passes from Syufy Theaters for use at their chain of movie theaters, several of which are situated in your area. You have routinely thrown the pass away and not used it. The Campbell City Attorney has advised you that by not returning the pass, you are deemed to have retained it and to have thereby received a gift of approximately \$2,000 in value. This has led to disqualification on the part of yourself and other local officials with regard to a major decision affecting Syufy. As a result of these multiple disqualifications, members of the Planning Commission and, later, the City Council drew straws in order to determine who would participate in the decision on Syufy. Your city attorney advised you that these steps were required by decisions of the Fair Political Practices Commission.^{1/}

I will not go through a detailed discussion of the Commission's rulings as I am enclosing a copy of the pertinent

^{1/} We cannot specifically confirm the correctness of any specific advice (including the proper valuation of the tickets) because we do not give advice regarding past conduct and we have not been presented with specific, detailed facts.

ones for your study.^{2/} I believe these will answer most of your questions. However, you have asked two separate questions to which I will endeavor to respond.

1. Does it make any difference which way you intend to vote (i.e., for or against your financial interest)?

No. The Political Reform Act^{3/} establishes an objective, neutral test for disqualification. Sections 87100-87103. Disqualification is required before the vote (or any other action to influence the decision) is undertaken in order to assure complete confidence in the impartiality of government decisions.

2. Your other question basically asks about the inter-relationship between "income" under the Political Reform Act and "income" for tax purposes.

"Income" for purposes of the Political Reform Act is defined by Section 82030, as follows:

(a) "Income" means, except as provided in subsection (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. "Income," other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

^{2/} Hopkins Opinion, 3 FPPC Ops. 107, No. 77-022; Hudson Opinion, 4 FPPC Ops. 13, No. 77-007; and Agnost (Feinstein) Advice Letter No. A-84-014. See also the enclosed FPPC Bulletin article regarding gift limitation (Nov. 1983 issue).

^{3/} Government Code Sections 81000-91014. All statutory references made are to the Government Code.

(b) "Income" also does not include:

(1) Campaign contributions required to be reported under Chapter 4 of this title.

(2) Salary and reimbursement for expenses or per diem received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization.

(3) Any devise or inheritance.

(4) Interest, dividends or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(5) Dividends, interest or any other return on a security which is registered with the Securities and Exchange Commission of the United States government.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status if:

(A) Used to purchase the principal residence of filer; or

(B) The balance owed does not exceed ten thousand dollars (\$10,000).

(9) Any loan from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan from any such person shall be considered income if the lender is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status, so long as the balance owed to the creditor does not exceed ten thousand dollars (\$10,000).

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

As you can see, the term "income" includes a "gift." This term is defined in Section 82028, as follows:

(a) "Gift" means, except as provided in subdivision (b), any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount 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. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(b) The term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material";

(2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph;

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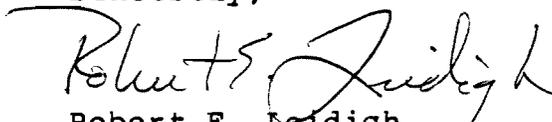
(4) Campaign contributions required to be reported under Chapter 4 of this title;

(5) Any devise or inheritance.

The term "income" also includes a loan, even if the loan has been received in a previous year. Clearly, such funds would not be reportable income under the tax laws. The purposes served by the Political Reform Act and the tax laws are different. Consequently, the definitions of income differ and what is reportable under the Political Reform Act may not be reportable as income.

I hope this letter and its enclosures assist you in understanding the provisions of the Political Reform Act. I also enclose a copy of our conflict of interest pamphlet for your review. Should you have any further questions on this matter or desire our assistance on other matters, please do not hesitate to contact us. I may be reached at 916/322-5901.

Sincerely,


Robert E. Leidigh
Counsel, Legal Division

REL:km
Enclosures

925 Buchanan Ave
Campbell, Ca 95008
April 9, 1984

F P P C
APR 11 2 05 PM '84

Dear Chairman,

I am a Chairman Commission for the City of Campbell. I have been notified that I should believe myself as having a conflict of interest or an item involving land owned by the Agency Enterprise (owner of a West-in-Thanks). Agency has sent me a return pass. For the past year, I have been notified that the pass is worth less than \$50 and need not be declared, so I have simply thrown it away.

The issue, however, an application from Agency came before me. Our city attorney stated that due to a ruling made by the FPC, all Chairman Commission should decline to Agency within 30 days. The FPC ruling was 77-022 dated 12/8/77. The attorney further stated that we should modify our conflict of interest forms to show receipt of a gift from Agency valued at \$2000.

I am writing for a clarification of your ruling for these major reasons that come to mind.

(1) The ruling assumes that I am going to vote for the project. Am I in conflict of a vote against the project?
(2) I believe all Commissionaries directed to believe themselves in conflict toward the Commission to be re-constituted by the drawing of straws. This leaves other concerns. The Chairman Commission is operated by the City Council and each up holding a certain political balance. That balance is, or could easily be, destroyed by the drawing of straws. In this instance, the Agency application went on to the City Council and ignored all the Council's desires. The Council is elected by the public through elections. The Council is elected by the public through elections.

G. Wilkinson
Planning Commission
925 Robinson Ave
Campbell, Ca 95008

Graciously yours,
G. Wilkinson

alterations, I believe the in a more serious matter.
(3) If a member was entitled of interest from the above a
gift of \$2000, what job did that do to me in regards to my
reporting to the state and federal government on income tax?
(Even though I have never used the pass, I am being asked
to believe that I have received no value from it.) After
questions are all the more interesting in light of all the political
questions to the Mayor of San Francisco and to "Mr. Moore". I
think the FPPC making put a person in a "no-win"
situation.

I report, I have never used the above pass. yet I
am being asked to believe myself in conflict as if I had
received value from it.

Anything you could add to clarify my thinking on
this issue would be appreciated.