

State of California



Fair Political Practices Commission

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Technical Assistance •• Administration •• Executive/Legal •• Enforcement
(916) 322-5662 322-5660 322-5901 322-6441

April 18, 1984

John L. Taylor, Clerk
Board of Supervisors
City & County of San Francisco
City Hall
San Francisco, CA 94102

Re: Advice No. A-84-094

Dear Mr. Taylor:

In your April 6, 1984, letter to Jeanne Pritchard you requested advice on behalf of yourself and members of the Board of Supervisors concerning an offer of free passes or free tickets to the San Francisco Giants baseball games. On March 27, 1984, Giants president Robert A. Lurie sent you a letter stating you would not be receiving a free pass to the Giants games this year; however, if you want to attend any Giants games in the 1984 season you can call the Giants and they will send you the free tickets you request. Similar letters have been sent to the members of the Board of Supervisors. The letter also mentions that, upon request, you can receive "all courtesies" when you do attend a Giants game. I understand that to refer to free parking and use of the Stadium Club.

You have asked whether the letter, by itself, constitutes a gift from the Giants.

CONCLUSION

1. Receipt of a letter offering you free tickets to Giants baseball games and other "courtesies" if you call the Giants and ask for them does not, by itself, constitute receipt of a gift.
2. If you ask for any free tickets (for yourself or for anyone else), you will have received a gift equal in value to the value of the tickets and other courtesies requested.
3. If you request or receive tickets and courtesies worth \$250 or more, you may have to disqualify yourself from making or participating in decisions which may have a material financial

effect on the Giants. Disqualification will be required starting on the date you received the letter (April 1, 1984), regardless of the date on which you request or physically receive the tickets.

DISCUSSION

The Political Reform Act defines a "gift" to an official as the provision of any item of value to that official for less than its full market value. Government Code Sections 82028, 82044.^{1/} However, an offer to give you tickets in the future if you ask for them is not a gift. "A gift to be made in the future is no gift at all, for a gift requires the present and complete divestment of the subject property." In re Marriage of Pashley (1974) 40 Cal. App. 3d 1079, 1083. Since the letter from Robert Lurie does not constitute a gift, there is no need to "return" the gift by refusing the offer within 30 days.

However, if you accept the offer by asking for tickets for yourself or for anyone else's use, you will have received a gift. The value of the gift will be the price of the tickets, plus the value of any "courtesies" such as free parking or use of the Stadium Club.^{2/} If you receive a gift of tickets and courtesies of \$250 or more in the twelve month period from April 1, 1984 to April 1, 1985, you may be required by Section 87100 to disqualify yourself from decisions which it is reasonably foreseeable will have a material financial effect on the Giants.

For purposes of disqualification, April 1, 1984, will be considered to be the date of receipt of the gift of any tickets you may actually request in response to the Giants' letter. This rule is consistent with the disqualification provisions of the Political Reform Act (disqualification may be required when income is promised. Section 87103(c).) A request for tickets is evidence of intent to accept a gift at the time of the offer. Finally, if, in the case of a written offer of a gift,

^{1/} All statutory references made are to the Government Code, unless otherwise stated.

^{2/} If you ask for a season pass, rather than for tickets to individual games, you should consult the Commission opinion in Hopkins, ³ FPPC Opinions 107 (1977) on how to value the pass.

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we were to say for purposes of disqualification^{3/} that the gift is not received until it is actually requested or physically accepted, an official could purposely postpone receipt of a gift until after making a decision affecting the donor. Such behavior would clearly frustrate the purposes of the Act.

In your letter, you asked whether it would be advisable for the Giants to send a supplemental letter stating that it would not provide tickets or other courtesies of more than \$249 to any single official. Such a letter would clarify the intent of the parties to keep the gifts below the disqualification threshold of the Act. If, in addition, the Giants kept track of the value of the gifts to individual officials, situations requiring disqualification could be avoided completely. However, it is not necessary for the Giants to send such a letter; the same result can be obtained by having the officials voluntarily limit their requests to \$249.

If you have any further questions on this matter, please do not hesitate to call me.

Very truly yours,



Barbara A. Milman
General Counsel

BAM:km

^{3/} For the sake of consistency, the date of receipt of the letter should also be treated as the date of receipt for disclosure purposes.



BOARD OF SUPERVISORS

CITY HALL, SAN FRANCISCO 94102 • TELEPHONE 558-3184

April 6, 1984

APR 9 10 44 AM '84
F P P C

Ms. Jeanne Pritchard
Political Reform Consultant
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA. 95804

Dear Ms. Pritchard:

As we discussed on the telephone, members of the Board of Supervisors and I have received essentially identical letters from the San Francisco Giants dated March 27, 1984. The letter indicates the Giants will not be sending passes which they have sent in the past because they do not want inadvertently to put Supervisors in a position which may place them in a technical conflict of interest which would then prohibit them from acting in an official capacity in matters affecting the Giants.

I raise with you the question of whether this letter, or any similar letter or statement that a gift is available, constitutes a gift. You indicated that the initial FPFC staff reaction is that an offer to make a gift is not the same as a gift but ask that I forward to you a copy of the letter so that you could more carefully examine the question and respond to me in writing.

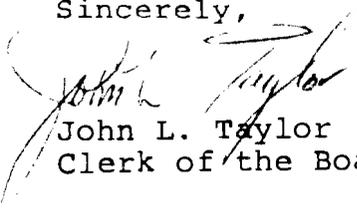
In considering this matter, I would ask you to take into account the following three factors:

1. The letters were received about April 1, having been mailed from Phoenix, Arizona. The 30 day period during which a gift can be returned will expire soon.
2. If you conclude that the letter could be construed as a gift, I hope you will word your decision in such a way that the Giants could supplement the letter with a followup letter saying the March 27 letter should not be construed as a gift or an offer to make a gift to the extent of \$250 or more.

3. I hope you recognize that many people are on mailing lists of organizations which assert a gift is being held for the recipient of the letter and all the recipient has to do is come to a certain place to pickup the gift. In short, I hope no FPPC decision will be so broad that every offer of a gift will be construed as a gift.

Enclosed is a copy of the letter sent to me by the Giants.

Sincerely,



John L. Taylor
Clerk of the Board

Attachment

cc: Supervisor John L. Molinari
City Attorney
Corey Busch



ROBERT A. LURIE
PRESIDENT

March 27, 1984

Mr. John Taylor, Clerk
Board of Supervisors
City & County of San Francisco
City Hall
San Francisco, CA 94102

Dear John:

As you know, in the past it has been our pleasure to provide you with certain passes to Candlestick Park. Because of the recent ruling of the Fair Political Practices Commission in the matter regarding Mayor Feinstein, and due to the fact that the Commission is still looking into the question of public officials receipt of free tickets and passes, we have determined that this year we will not be sending the passes which you have received in the past.

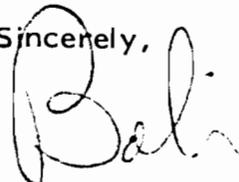
Because of the uncertainty created by the FPPC ruling and by the fact that they have yet to rule on public officials other than the Mayor, we do not want inadvertently to put you in a position which may place you in a technical conflict of interest which would then prohibit you from acting in an official capacity in a matter affecting the Giants.

We are pleased to continue to extend to you all courtesies should you wish to visit Candlestick Park, and we would ask that should you wish to attend a Giants game during the 1984 Season that you contact Corey Busch or Florence Myers at 415/468-3700.

Nothing in this letter is to imply that we believe that either the Giants or you have violated any rules or regulations.

If your judgment in this matter is different than ours and you would like to receive your passes, please do not hesitate to let me know and I will be happy to forward them to you.

I look forward to seeing you often at Candlestick Park as 1984 promises to be a most exciting year for the Giants.

Sincerely,


Robert A. Lurie
President

RAL/fm