

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

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

October 24, 1984

Adrian Kuyper
County Counsel
County of Orange
P.O. Box 1379
Santa Ana, CA 92702-1379

Re: Your Request for Advice on
Behalf of Harriett M. Wieder;
Our No. A-84-251

Dear Mr. Kuyper:

You have written requesting our advice on behalf of Orange County Supervisor Harriett M. Wieder relative to her participation in the Olympic Torch Run. Your letter presents the facts as follows:

FACTS

The Olympic Torch Run was established by the Los Angeles Olympic Organizing Committee (LAOOC) to carry the Olympic Flame by torch runners from Washington, D.C. to the site of the Olympics in Los Angeles. The purpose of the Torch Run was to promote the Olympics, and the Olympic spirit, and to raise money for local charitable groups active in youth sports and the development of Olympic athletes. To this end the LAOOC developed a subscription program whereby one-kilometer legs of the Run could be subscribed by donating \$3,000 to a local charity pledged to the fostering of youth sports. The donor was entitled to specify the recipient group, the runner, and to receive the torch used to carry the flame during the Run. The cost of the torch, approximately \$150, was paid by the LAOOC and was not deducted from the donation. In addition, the LAOOC provided to each participant runner an Olympic running shirt, running shorts, and socks. During the torch Run an approximate total of 12,000 one-kilometer legs were run, of which approximately 3,500 were subscribed.

In Los Angeles, San Diego, and Orange Counties, the Pacific Bell Telephone Company (Company) was actively involved in committees to solicit local subscriptions for the Torch Run. In addition, each of three areas of Pacific Bell subscribed to a one-kilometer leg of the Run. These subscriptions were funded from the particular area's budgeted Corporate Contribution Account. These accounts had long been established by the Company to contribute to local community, civic and cultural activities. In Orange County, the Company has regularly contributed to the Orange County Boy Scouts of America.

On or about March 8, 1984, Pacific Bell's Orange County area pledged the money for a Torch Run subscription and designated the Orange County Boy Scouts of America as the recipient of the pledge. At that time no runner had been selected. In approximately April of 1984, Pacific Bell's Orange County managers decided that the runner should be a representative of the people of Orange County, whom they serve. Supervisor Wieder, as Chairman of the Orange County Board of Supervisors, was the logical choice and when the Supervisor was asked, she accepted. At the time Pacific Bell's request was accepted, neither the date, time nor place of participation was known, except that it would be somewhere in Orange County.

On July 26, 1984, the Supervisor participated in the Torch Run by running a one-kilometer leg in Santa Ana, California, a city outside her supervisorial district. Prior to the run, the Supervisor was given a running shirt, shorts, and socks. The cost or value of these items has not been estimated. At the conclusion of the run, the Supervisor was allowed to keep the Olympic Torch she had carried. Thereafter, the Supervisor attended a luncheon in honor of the Torch Run and was presented, on behalf of the County, a lithograph of an Olympic Torch Runner by the area manager of Pacific Bell. The acceptance has been formalized by a resolution of the Board of Supervisors. The lithograph has been hung in the lobby of the Board offices and is viewable by the general public. The estimated cost of the lithograph is \$80.00. The luncheon was attended by approximately one hundred people and cost \$1,152, which amount was paid by Pacific Bell Company.

I am advised that Pacific Bell Company may be bidding on a large County contract within the next year.

QUESTION

You have asked whether, under the facts quoted above, Supervisor Wieder has received a reportable gift within the meaning of the Political Reform Act^{1/} ("Act") and, if so, what should be the proper valuation of that gift.

CONCLUSION

As I orally advised Mr. Bob Austin of your staff on September 28, 1984, our conclusion is that Ms. Wieder's participation in the Olympic torch Run was analogous to receipt of ticket to a charitable fundraiser. In such circumstances our advice has been that the face value of the admission price is not the value of the gift received, so long as the recipient official claims no tax deduction for this cost. The gift is valued at the actual cost of the meal, entertainment, etc. for the particular event. In the instant case, it is the cost of the torch, the shirt, shorts, socks and the meal. The donor is Pacific Bell Company. The lithograph is a gift to the County of Orange and, as such, is not reportable.

ANALYSIS

The Act defines the term "gift" 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.

^{1/} Government Code Sections 81000-91014. All statutory references are to the Government Code unless otherwise specified. Our analysis is confined to the Act and does not consider the Orange County "Tin Cup" Ordinance, which is your purview.

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

. . .

(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....

(Section 82028(a), (b)(2).)

The Act defines the term "payment" as follows:

"Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

(Section 82044.)

Thus, when Supervisor Wieder participated in the Olympic Torch Run she received a "payment," for which consideration of equal or greater value was not given by her to the donor of the gift. The cost to Pacific Bell was \$3,000, donated to the Orange County Boy Scouts of America. This was akin to the purchase of ticket to a Boy Scouts' fundraiser -- a ticket which could then be given to someone of the donor's choice to attend the fundraising event.

Under these circumstances, we have advised that the recipient has received a gift; however, the value of the gift is not the full price of the ticket, which contains a built-in surcharge for a charitable donation. Section 82028(b)(2) permits the recipient of a gift to, in turn, donate it to charity within 30 days of receipt. So long as a tax deduction is not claimed by the official, the original receipt of the gift is nullified by the subsequent return or donation to charity. In the case of a charitable fundraiser, the charitable donation portion of the price is transmitted directly to the charity, but the effect is the same as if the full sum of money had been handed to the official who, in turn, passed on the donated sum to the charitable organization. Consequently, in such circumstances, we have advised that the value of the gift received by an official is the value of the actual benefits from attending the event (whether actually attended or not). See, Advice Letter to Judge Charles G. Rubin, No. A-84-015 (copy enclosed).

In Supervisor Wieder's situation, she received for herself the torch, shorts, shirt and socks. These should be valued as per the Cory Opinion, 1 FPPC 153 and the Hopkins Opinion, 3 FPPC 107, at 112. Obviously, the cost to the sponsoring organization would be one way of estimating their value. See, Cory Opinion, 1 FPPC 153 at 154.

In addition to these tangible benefits, and as a separate but related event, Supervisor Wieder received a free meal at a luncheon attended by approximately 100 people, which cost Pacific Bell Company \$1,152 to host. Pursuant to the Commission's Gutierrez Opinion, 3 FPPC 44, the appropriate valuation is to divide the cost by the number of attendees, in which case her share equals \$11.52.

The receipt of the lithograph was on behalf of the County of Orange and the attached copy of Resolution No. 84-1418 by the Board of Supervisors shows that the lithograph has been duly accepted by the County. Therefore, the lithograph was not a gift to Supervisor Wieder but was a gift to the County, since the donors never intended it as a gift to her as an individual.

In conclusion, Supervisor Wieder must report the aggregate value of all of the benefits which she received as a result of her Olympic Torch Run -- the torch, shirt, shorts, socks and meal -- if their combined value, according to a good faith estimate, equals or exceeds \$50.^{2/} Section 87207(a)(1).

If the value of all of these gifts from Pacific Bell Company equals or exceeds \$250, then Supervisor Wieder must disqualify herself from participating in any way in any decision which will have a reasonably foreseeable material financial effect on Pacific Bell Company, such as the upcoming contract. The period for such a potential disqualification would be measured from the date of receipt of the gifts. The Torch Run gifts are deemed received at the time she exercised control over the right to run; i.e., when she accepted Pacific Bell Company's offer to run. The gift of the luncheon was received at the time that it was attended. Since all were received in calendar year 1984, they must be aggregated for purposes of her annual disclosure statement, but would not be aggregated for purposes of disqualification once one year has passed from the date of her acceptance of the offer to run.

^{2/} We note that the price of the torch is stated as \$150, consequently the \$50 threshold has clearly been exceeded.

Adrian Kuyper
October 24, 1984
Page 6

Should you have any further questions regarding this matter,
please do not hesitate to call me at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure ,



OFFICES OF

THE COUNTY COUNSEL
COUNTY OF ORANGE

ADRIAN KUYPER
COUNTY COUNSEL

WILLIAM J. McCOURT
CHIEF ASSISTANT

ARTHUR C. WAHLSTEDT, JR.
LAURENCE M. WATSON
ASSISTANTS

VICTOR T. BELLERUE
JOHN R. GRISET
CHARLES B. SEVIER
EDWARD N. DURAN
IRYNE C. BLACK
RICHARD D. OVIEDO
O.M. MOORE
JULEE ROBINSON
BENJAMIN P. DE MAYO
R. DONALD McINTYRE
HOWARD SERBIN
DANIEL J. DIDIER
GENE AXELROD
ROBERT L. AUSTIN
DONALD H. RUBIN
DAVID R. CHAFFEE
BARBARA H. EVANS
CAROL D. BROWN
BARBARA L. STOCKER
JAMES F. MEADE
STEFEN H. WEISS
MARY E. BUCHANAN
SUSAN STROM
DAVID B. BEALES
DEPUTIES

ORANGE COUNTY HALL OF ADMINISTRATION
CIVIC CENTER PLAZA, P.O. BOX 1379
SANTA ANA, CALIFORNIA 92702-1379 714/834-3300

Oct 3 10 54 AM '84

Writer's Direct Dial Number

834-6238

October 1, 1984

File No. O-232

John Keplinger, Executive Director
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Request For Advice Letter on Behalf of
Honorable Harriett M. Wieder, Chairman,
Orange County Board of Supervisors

Dear Mr. Keplinger:

This is to request an opinion pursuant to Government Code Section 83114(b), concerning whether the participation by Supervisor Wieder in the "Olympic Torch Run" last July amounts to a reportable gift under the Fair Political Practices Act, and, if so, the amount.

FACTS

The Olympic Torch Run was established by the Los Angeles Olympic Organizing Committee (LAOOC) to carry the Olympic Flame by torch runners from Washington, D.C. to the site of the Olympics in Los Angeles. The purpose of the Torch Run was to promote the Olympics, and the Olympic spirit, and to raise money for local charitable groups active in youth sports and the development of Olympic athletes. To this end the LAOOC developed a subscription program whereby one kilometer legs of the Run could be subscribed by donating \$3,000 to a local charity pledged to the fostering of youth sports. The donor was entitled to specify the recipient group, the runner, and to receive the torch used to carry the flame during the Run. The cost of the torch, approximately \$150, was paid by the LAOOC and was not deducted from the donation. In addition, the LAOOC provided to each participant runner an Olympic running shirt, running shorts, and socks. During the Torch Run an approximate total of 12,000 one-kilometer legs were run, of which approximately 3,500 were subscribed.

In Los Angeles, San Diego, and Orange Counties, the Pacific Bell Telephone Company (Company) was actively involved in committees to solicit local subscriptions for the Torch Run. In addition, each of three areas of Pacific Bell subscribed to a

John Keplinger, Executive Director
October 1, 1984
Page 2

one-kilometer leg of the Run. These subscriptions were funded from the particular area's budgeted Corporate Contribution Account. These accounts had long been established by the Company to contribute to local community, civic and cultural activities. In Orange County, the Company has regularly contributed to the Orange County Boy Scouts of America.

On or about March 8, 1984, Pacific Bell's Orange County area pledged the money for a Torch Run subscription and designated the Orange County Boy Scouts of America as the recipient of the pledge. At that time no runner had been selected. In approximately April of 1984, Pacific Bell's Orange County managers decided that the runner should be a representative of the people of Orange County, whom they serve. Supervisor Wieder, as Chairman of the Orange County Board of Supervisors, was the logical choice and when the Supervisor was asked, she accepted. At the time Pacific Bell's request was accepted, neither the date, time nor place of participation was known, except that it would be somewhere in Orange County.

On July 26, 1984, the Supervisor participated in the Torch Run by running a one-kilometer leg in Santa Ana, California, a city outside her supervisorial district. Prior to the run, the Supervisor was given a running shirt, shorts, and socks. The cost or value of these items has not been estimated. At the conclusion of the run, the Supervisor was allowed to keep the Olympic Torch she had carried. Thereafter, the Supervisor attended a luncheon in honor of the Torch Run and was presented, on behalf of the County, a lithograph of an Olympic Torch Runner by the area manager of Pacific Bell. The acceptance has been formalized by a resolution of the Board of Supervisors. The lithograph has been hung in the lobby of the Board offices and is viewable by the general public. The estimated cost of the lithograph is \$80.00. The luncheon was attended by approximately one hundred people and cost \$1,152, which amount was paid by Pacific Bell Company.

I am advised that Pacific Bell Company may be bidding on a large County contract within the next year.

THE POLITICAL REFORM ACT OF 1974 (ACT) AND TIN CUP

The Political Reform Act of 1974 (Govt. Code Sec. 91000 et seq.) requires members of the Board of Supervisors to disclose gifts of \$50.00 or more in value. Govt. Code Sections 87200, 87207(a)(1). If a supervisor receives gifts aggregating \$250.00 or more from any source, the supervisor is prohibited from making, participating in making, or in any way attempting to use

John Keplinger, Executive Director
October 1, 1984
Page 3

his or her official position to influence a governmental decision where it is reasonably foreseeable that the decision would have a material financial effect, distinguishable from its effect on the public generally, on that source. Govt. Code Secs. 87100, 87103(c); 2 Cal. Admin. Code Secs. 18700, 18702, and 18703.

As defined by the Act, the term "gift" is:

"[A]ny payment to the extent that consideration of equal or greater value is not received."
Govt. Code Sec. 2028(a).

but does not include:

[G]ifts 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" Govt. Code Sec. 82028(b)(2).

or:

[C]ampaign contributions required to be reported under Chapter 4 of this title" Govt. Code Sec. 82028(b)(4).

The term "payment" is defined in Section 82044 to include:

[A] payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services, or anything else of value, whether tangible or intangible."

The Act further requires members of the Board of Supervisors to file statements of campaign contributions (Govt. Code Sections 84100 et seq.). As provided in Section 82015, "contribution" means " . . . a payment, forgiveness of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes" (Also, 2 Cal. Admin. Code Sec. 18215.)

The Act is interpreted and enforced by the Fair Political Practices Commission (FPPC). Govt. Code Secs. 83100 et seq.,

John Keplinger, Executive Director
October 1, 1984
Page 4

83112, 83113, and 83114. Concerning reportable gifts under the Act, the FPPC has previously opined:

1. A gift will have been made if the recipient official has received something of value for which he or she did not provide equal or greater value, and to which the exemption from the definition of income in Section 82030(b)(2) is not applicable. The value of the gift is determined by the value derived from its use, and if the value exceeds the statutory amount it is reportable. In re Thomas, 3 FPPC 30.

2. Acts of neighborliness are not gifts. However, if it is foreseeable that the donor will have business before the official there is a strong presumption that a gift has been made. Even if the donor has no intent of attempting to influence the official, the need to avoid even the appearance of possible impropriety is reason alone to require that a service provided to an official under such circumstances be disclosed. In re Stone, 3 FPPC 52.

3. In determining whether a gift is made to the county only, or the official, the following criteria must be met:

(a) The donor intended to donate the gift to the county;

(b) The county exercises substantial control over the gift;

(c) The donor has not limited use of the gift to specified or high level employees, but rather has made it generally available to county personnel in connection with county business without regard to official status; and

(d) The making and use of the gift was formalized in a resolution of the county board of supervisors (a written public record will suffice for administrative agencies not possessing the legislative power of adopting resolutions) which embodies the standards set forth above. In re Stone, 3 FPPC 52; 57.

4. The value of a reportable gift is its estimated fair market value at the time received. In re Hopkins, 3 FPPC 107, 112; Govt. Code Sec. 81011.

5. Generally, the fair market value of a gift is the value that the gift would command in the open market. In re Hopkins, 3

John Keplinger, Executive Director
October 1, 1984
Page 5

FPPC 107, at 112, citing Kaiser Co. v. Reid (1947), 30 Cal. 2d 610, 623.

6. A filing official need not employ an appraiser or resort to similar means in determining a gift's value. The official's own good faith estimate of the value of the gift will meet the requirements of the Act. In re Hopkins, 3 FPPC 107, at 112. In re Cory, 1 FPPC 153.

7. An official who attends a reception in his or her honor receives a gift equal to the per capita cost of giving the reception. However, the gift is not reportable if the per capita cost is less than \$50 per person. The monetary value that would be assigned to the intangible benefit received as a result of attending a reception in one's own honor is minimal and need not be reported. In re Gutierrez, 3 FPPC 44.

8. Tickets to charitable fundraisers purchased by someone other than the sponsor and then given to the official may be reportable as gifts to the official. The reportable value of such tickets is only the value of the event itself (meals, entertainment, etc.), the portion of the ticket price that represents a charitable contribution is not included in calculating the value of the gift. In re Rubin, FPPC File No. 8-84-015.

I have concluded that the right to participate in the Olympic Torch Run is analogous to the receipt of charitable tickets from someone other than the sponsor whose value should be measured by the actual cost of the items received, namely the Olympic Torch and the running clothes. If the actual cost is not ascertainable, then a good faith estimate will suffice. It is my opinion that these items should be reported as of the date the invitation to participate in the Olympic Torch Run was accepted, which would be considered the date received. I have further concluded that the value of the luncheon sponsored by Pacific Bell should be valued at the per capita cost of giving it. This item should be reported as of the date the invitation to it was accepted. In my opinion the lithograph should be considered a gift to the County and not required to be reported by the Supervisor.

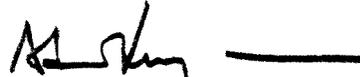
My staff has shared orally the results of this research with your legal staff, principally Mr. Robert Leidigh, who has been most generous with his time and who has informed us that your attorneys generally concur with our analysis.

However, the purpose of this letter is to formally request your written advice pursuant to California Government Code

John Keplinger, Executive Director
October 1, 1984
Page 6

Section 83114(b) so that this matter may be finally put to rest.
Should you have any questions or desire to discuss our opinion in
any further detail, please do not hesitate to call.

Very truly yours,

A handwritten signature in black ink, appearing to read "Adrian Kuyper", followed by a horizontal line.

ADRIAN KUYPER
COUNTY COUNSEL

RLA:rer
Enclosure

cc: Supervisor Harriett M. Wieder