

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 • • Statements of Economic Interest
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April 15, 1985

Melvyn W. Price
Supervising Deputy County Counsel
700 H Street, Suite 2650
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-85-067

Dear Mr. Price:

Thank you for your letter requesting advice on behalf of two Sacramento County Supervisors regarding their responsibilities under the conflict of interest provisions of the Political Reform Act.^{1/}

FACTS

You provided the following information in your letter:

The County of Sacramento owns and operates Sacramento Metropolitan Airport (SMF). SMF is governed by the five-member Sacramento County Board of Supervisors (the Board).

Periodically, the Board leases property at SMF, and grants operating rights in connection with the leases, to various airlines and rental car companies. Typically, the agreements are not competitively bid, but are negotiated by SMF management staff, subject to the approval of four-fifths of the Board. Section 25536.

The Board also approves amendments to the existing lease agreements. Currently, SMF management staff plans to present for the Board several amendments which would increase the amount of terminal building space leased to the rental car companies and to certain airlines. These amendments must be approved by a four-fifths vote of the Board. Section 25536.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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Under federal law, the Board has no authority to exclude any airline from operating at SMF or to refuse to provide the airline with the use of airport space and facilities on substantially the same terms as all other airlines operating at SMF. 49 USC 1301, et seq.

Two Sacramento County Supervisors are employed as travel agents by two different travel agencies doing business in Sacramento County. Both Supervisors are compensated on a straight salary basis, and receive no commissions from, and have no ownership interest in, the respective travel agencies.

These two Supervisors, in their capacity as travel agents, may receive free or discount air transportation for airlines and discounts on car rentals from rental car companies. For example, one Supervisor develops and leads group tours to foreign locations. The Supervisor's travel expenses are paid either by the travel agency including those costs in the price charged to persons going on the tour, or under a travel industry practice whereby the airline providing transportation for the tour provides the travel agency with a free plane ticket if the agency books a certain number of persons for the tour, in which case the travel agency generally provides the free ticket to the travel agent leading the tour, as a part of the consideration for the work involved.

Another example of free airline transportation is the familiarization tour, or "fam" tour. A "fam" tour is a trip arranged and paid for by an airline or a cruise ship line to familiarize travel agents with the trip in order to enable them to promote future sales to the public. Airlines sponsoring "fam" tours solicit the participation of travel agents by mass mailings to the various travel agencies and provide accommodations on a "first come, first served" basis. The travel agency decides which of its travel agents will participate in a particular "fam" tour on its behalf.

Finally, one of these Supervisors is a member of the International Association of Travel Agents, and is therefore eligible for certain air fare discounts when the airlines make those discounts available.

Certain discounts on rental cars are also made available by rental car companies to all travel agents, including these two Supervisors.

The Air Transportation Association states that there are 26,037 travel agencies nationwide, and 4,649 travel agencies in California. Each travel agency has an average of five to six

employees. The International Association of Travel Agents has 24,120 members nationwide, and 4,582 members in California.

QUESTION

If during the preceding 12 months, either Supervisor, due to his or her status as a travel agent, has received air transportation or air transportation discounts totaling \$250 or more provided by a lessee airline, or rental car discounts totaling \$250 or more provided by a lessee car rental company, through one of the programs described above, must that Supervisor disqualify himself or herself from participating in any decision which could have a reasonably foreseeable material financial effect on the lessee airline or car rental company?

CONCLUSION

Under the facts presented, if either Supervisor has received air transportation, air transportation discounts, or rental car discounts totaling \$250 or more provided by a lessee airline or car rental company, the Supervisor is not required to disqualify himself or herself from participating in any decision which could have a reasonably foreseeable material financial effect on that lessee airline or car rental company.

DISCUSSION

Section 87100 prohibits any public official from making, participating in, or attempting to use his official position to influence any governmental decision in which he knows, or has reason to know, he has a financial interest. A public official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other things, a donor of a gift or gifts aggregating \$250 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. Section 87103(e). Accordingly, if either of the Supervisors in question has received gifts aggregating \$250 or more in value from an airline or rental car company during the 12 months prior to the time when the Board is faced with a decision concerning lease of space at SMF to the donor airline or rental car company, he or she must disqualify himself or herself from participating in that decision, if that decision would have a reasonably foreseeable material financial effect on the donor airline or rental car company.

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Pursuant to Section 82028, a gift is defined as 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. For purposes of your inquiry, it is necessary to determine whether the free or discount air transportation or discount car rental provided to the two Supervisors in their capacity as travel agents is considered a gift from the airline or rental car company under Section 82028.

In certain instances, such as the "fam" tours or the group tours, the free air transportation is provided by the airline to the travel agency, which then provides the travel agent with the free ticket. In these cases, the Supervisor who, as a travel agent, accepts free air transportation from his or her employer has received that air transportation from the travel agency rather than from the airline. Therefore, the airline would not be a donor of gifts aggregating \$250 or more received by the Supervisor.

In its opinion to Blanche Russel, 1 FPPC Opinions 191 (No. 75-135, December 3, 1975), the Commission considered whether a hotel discount offered to all state employees was a discount available to members of the public without regard to official status. The Commission concluded that a discount made available on a uniform basis to all state employees was a discount available without regard to official status, so long as the discount was available to all employees of the state without regard to what office or position they hold in state government. The Commission stated that a "discount available to members of the public" need not be available to all members of the public, but must be offered on a uniform basis to a diverse group. The Commission noted that the employees of the State of California were a large and heterogenous assortment of individuals, and that more than 130,000 persons were state employees at that time.

Although all travel agents are involved in the same profession, they comprise a large group of persons. Based on the information you provided, there are at least 130,000 travel agents nationwide, and more than 23,000 travel agents in California. Accordingly, we conclude, based on the Russel Opinion, supra, that a discount offered to a public official, in his or her capacity as a travel agent, is a discount made available to members of the general public. So long as the discount is offered to the public official because of his or her status as a travel agent and not because of his or her status as

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a public official, the discount is not a gift for purposes
Political Reform Act.

Therefore, if under one of the programs in question, either
of the two Supervisors accepts air transportation, air
transportation discounts, or rental car discounts totaling \$250
or more, the Supervisor is not required to disqualify himself or
herself from participating in decisions which could have a
reasonably foreseeable material financial effect on the lessee
airline or car rental company that provided the air
transportation or rental car.

If you have any further questions regarding this matter,
please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh

Memorandum

To : File No. A-85-067

Date : July 15, 1985

From : FAIR POLITICAL PRACTICES COMMISSION

Kathy Donovan *led*

Subject: Deadline Extension

On April 10, 1985, I spoke to Mel Price about his request for advice. I explained that we did not think there would be a conflict of interest due to the travel agent discounts or rebates, and that I was writing a letter confirming that advice. He said that the Board of Supervisors were not meeting on those issues before April 23, so he did not need the letter immediately. He agreed to an extension until April 17, 1985.



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February 28, 1985

Barbara Milman
Chief Counsel
Fair Political Practices Commission
1100 "K" Street Building
Post Office Box 807
Sacramento, California 95814

Re: Request for Conflict of Interest Opinion

Dear Ms. Milman:

The purpose of this letter is to request an opinion regarding certain conflict of interest questions that have arisen with respect to the salaried, non-commission, travel agency employment of two members of the Board of Supervisors of Sacramento County.

Background

(a) The Airport

The County of Sacramento owns and operates Sacramento Metropolitan Airport ("SMF"). SMF is governed by the Sacramento County Board of Supervisors, comprised of five members ("the Board").

Periodically, the Board leases property at SMF, and grants operating rights in connection therewith, to various airlines and rental car companies. Typically, such agreements are negotiated by SMF management staff rather than competitively bid, subject to the approval of the Board, which has sole authority to enter into contracts of this nature on behalf of the County. (The Board may enter into such agreements for Airport purposes by a four-fifths vote, without competitive bid, under authority of California Government Code Section 25536.)

Current airline and rental car company leases at SMF with whom the Board has contracted pursuant to Section 25536 include the following:

Pacific Southwest Airlines, American Airlines, Inc., Western Air Lines, Inc., Air California, Republic Airlines, Inc., Frontier Airlines, Inc., United Air Lines, Inc.;
Avis Rent-A-Car, Budget Rent-A-Car, Hertz Rent-A-Car, and National Car Rental.

All the foregoing airline leases will expire December 31, 1986, and all the foregoing rental car company leases will expire October 28, 1987. It is anticipated that SMF management staff will negotiate successor agreements with most, if not all, such lessees and present the same for action by the Board at a future date, prior to expiration of the current agreements.

From time to time the Board is asked to approve amendments to the existing lease agreements. At the present time, SMF management staff plans to present for Board action several such amendments. Specifically, such amendments would increase the amount of Terminal Building space leased at SMF to all the foregoing rental car companies, for the purpose of installing telephone facilities for use by their respective patrons in reserving rental cars, and would increase the amount of Terminal Building space leased to Pacific Southwest Airlines and Air California, for the purpose of providing additional holdroom space for use by their respective passengers.

This Office has concluded that four-fifths vote of the Board, pursuant to Government Code §25536, is required for approval of the proposed lease amendments.

Under the Airline Deregulation Act of 1978, (49 USC 1301, et seq.), and the terms of various grant agreements entered into by the Board with the Federal Aviation Administration ("FAA"), the Board has virtually no authority to exclude any airline that wishes to do so from operating at SMF, or to refuse to provide such an airline with the use of Airport space and facilities on substantially the same terms as all other airlines so operating.

As required by 49 USC 2210, the FAA grant agreements prohibit the County from unreasonably denying tenant status at SMF to any air carrier willing to assume obligations substantially similar to those already imposed on tenant air carriers at SMF, and limit the County to imposing on air carriers using SMF only "nondiscriminatory and substantially comparable rates, fees, rentals and other charges".

In light of the foregoing, each of the current leases with the above-listed airlines imposes the same rental and fee structures, expressly precludes the County from contracting with another airline on more favorable terms, and requires each lessee

airline to cooperate, in accordance with a specified procedure, in the accommodation of any new airlines that may from time to time seek to operate at SMF.

(b) Travel Agency Employment

Two Supervisors are employed as travel agents by two different agencies which are doing business in the County of Sacramento. These Board members are compensated on the basis of straight salary. They receive no commissions from, and have no ownership interest in, the respective travel agencies.

In his capacity as a travel agent, one of the Supervisors develops and leads group tours to various foreign locations. His expenses for the travel involved in such work is paid, either: (1) by reason of those costs having been included in the price charged by the travel agency to the persons going on the tour, or (2) under a travel industry practice, whereby the entity providing transportation for the tour (e.g., an airline), provides the travel agency with a free ticket if the agency books a certain number of persons for the tour. In the latter instance, the agency generally provides the free ticket to the travel agent leading the tour, as a part of the consideration for the work involved.

In his capacity as a travel agent, one of the Supervisors also has occasion from time to time to participate in familiarization, or "fam" tours. A "fam" tour is a trip arranged and paid for by an airline, or a cruise ship line, to familiarize travel agents with the trip in order to enable them to promote future sales to the public. Airlines sponsoring "fam" tours solicit the participation of travel agents by mass mailings to the various travel agencies, and provide accommodations on a "first come, first served" basis. The individual travel agency decides which of its travel agents will participate in a particular "fam" tour on its behalf.

Solely by reason of their status as travel agents, the Board members are eligible to certain discounts on car rentals, when made available by rental car companies, which they may use for any purposes. (Note: The Air Transport Association advises that there are (1) 26,037 travel agencies nationwide; (2) 4,649 travel agencies in California; and (3) five to six employees per travel agency on average.)

Effective January 1, 1985, by reason of his membership in the International Association of Travel Agents ("IATA"), one Board member will also be eligible to certain discounts on air fare, for any purpose, when made available by airlines. (IATA advises

that they have 24,120 members nationwide, and 4,582 members in the State of California.)

The availability and value of such car rental and air fare discounts vary, and are determined as a matter of policy by the respective providers.

Questions

1. Must a Board member disqualify himself/herself from participating in a decision by the Board which would have a material financial effect on a particular airline lessee at SMF, if, during the preceding twelve months he/she has done any of the following:

(a) In his/her capacity as a travel agent he/she has led a group of tourists on a trip, with air transportation furnished by a lessee airline, and

(i) The costs of his/her air fare for the trip would have been \$250 or more, but was furnished without charge to the Board member, in that such cost was included in the price paid to the travel agency by the tourists participating in the trip, and the Board member's fare was purchased from such proceeds; or

(ii) The cost of the Board member's air fare would have been \$250 or more, but the lessee airline furnished a free ticket to the travel agency due to the number of persons it booked for the trip, and the travel agency provided the free ticket to the Board member as part of the consideration for leading the tour.

(b) In his/her capacity as a travel agent, the Board member participated in a "fam" tour sponsored by a lessee airline, where air transportation which would have cost \$250 or more was furnished by said airline without charge to the Board member on the basis of his/her having been selected by the travel agency to participate in the tour.

2. Must a Board member disqualify himself/herself from participating in a decision by the Board which would have a material financial on a particular rental car company lessee at SMF, if, during the preceding twelve months he/she has rented a car from the lessee rental car company, for his/her own use, at his/her own expense, where by reason of his/her status as a travel agent, he/she has received a discount totaling \$250 or more on the cost of such car rental.

Barbara Milman

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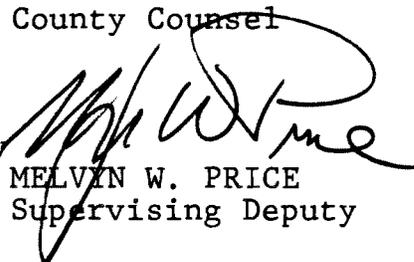
February 28, 1985

3. If a Board member's disqualification would be required under any of the circumstances described under questions 1 or 2, does Government Code Section 87101 provide an exception to such disqualification where one of the two Board members participation is necessary to obtain a four-fifths vote by the Board pursuant to Government Code Section 25536.

Very truly yours,

L. B. ELAM
County Counsel

By


MELVIN W. PRICE
Supervising Deputy

MWP:sd

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