



California Fair Political Practices Commission

January 17, 1986

David G. Kelley
Assemblyman, Seventy-Third District
State Capitol
Sacramento, CA 95814

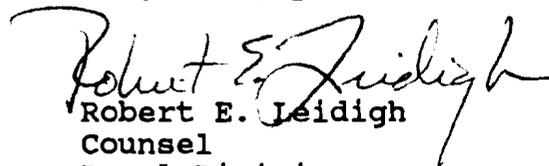
Re: 86-030

Dear Assemblyman Kelley:

Your letter requesting advice under the Political Reform Act has been received by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: Barbara Price



California Fair Political Practices Commission

January 24, 1986

David G. Kelley, Member
California Legislature
State Capitol, Room 5164
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-86-030

Dear Assemblyman Kelley:

You have asked a question regarding your reporting obligations as follows:

FACTS

In 1984, I purchased stock in an energy company which I reported on Schedule A of my Form 721, Statement of Economic Interests.

On the recommendation of a consultant in the energy field I sold stock in 1985 and sustained a loss.

Since the sale and subsequent loss was based on this individual's recommendation, he chose to issue stock to me in another energy company of a value equal to the loss I sustained. (It is a restricted stock and can only be sold after a two year time period has elapsed.)

QUESTION

I reported the original stock purchase in 1984 and will be reporting the sale this year. But, the question is, how and where do I report the stock which was issued to me to cover the loss I sustained? Should this stock be reported as an investment in the same manner as the other stock?

ANSWER

The stock which you received during 1985 should be reported as an investment on Schedule A if its value equalled or exceeded \$1,000 at any time during the period that you held the stock in 1985. However, if the company is not doing business in California, hasn't done business in California in the last two years and doesn't plan on doing business in California in the future, you need not report the stock on Schedule A.

In addition, the receipt of the stock by you constituted either income or a gift from the consultant; based upon your letter, it appears to have been the latter. A payment is a gift under the Political Reform Act^{1/} if it meets the definition of Section 82028.

(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,

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

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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;

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

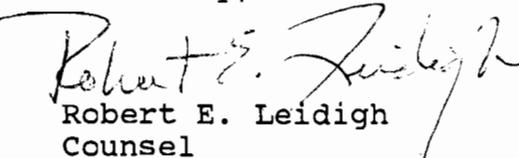
(5) Any devise or inheritance.

Section 82028.

"Income" as defined in Section 82030 includes gifts;
however, for reporting purposes, gifts are required to be
disclosed separately. Section 87207(a). The value of the
stock must be reported on either Schedule D (if it is
income) or on Schedule F (if it is a gift) if its value
exceeds \$250 (income) or \$50 (gift). This is true even if
the stock is not reportable as an investment on Schedule
A, as discussed above.

Should you have further questions regarding your
reporting obligations, please feel free to contact our
office at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:plh

CALIFORNIA LEGISLATURE

SACRAMENTO OFFICE:

STATE CAPITOL
SACRAMENTO 95814
(916) 445-7852

NANCY LUCCHESI
ADMINISTRATIVE ASSISTANT

COMMITTEES:

AGRICULTURE
ECONOMIC DEVELOPMENT
& NEW TECHNOLOGIES
LABOR & EMPLOYMENT
VETERANS AFFAIRS (VICE CHAIR)
WATER, PARKS & WILDLIFE



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TOLL FREE
1-800-824-5200

DAVID G. KELLEY
ASSEMBLYMAN, SEVENTY-THIRD DISTRICT
RIVERSIDE COUNTY

January 14, 1986

Mr. John Keplinger
Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

ATTENTION: Jay Greenwood
Technical Assistance Division

Dear Mr. Keplinger:

In 1984, I purchased stock in an energy company which I reported on Schedule A of my Form 721, Statement of Economic Interests.

On the recommendation of a consultant in the energy field I sold the stock in 1985 and sustained a loss.

Since the sale and subsequent loss was based on this individual's recommendation, he chose to issue stock to me in another energy company of a value equal to the loss I sustained. (It is a restricted stock and can only be sold after a two year time period has elapsed.)

I reported the original stock purchase in 1984 and will be reporting the sale this year. But, the question is, how and where do I report the stock which was issued to me to cover the loss I sustained? Should this stock be reported as an investment in the same manner as the other stock?

Inasmuch as my 1985 Statement of Economic Interests must be filed prior to March 1, 1986, I would appreciate having an answer to the above questions as soon as possible.

Sincerely,

DAVID G. KELLEY

DGK:nl