



California Fair Political Practices Commission

February 19, 1986

Terri Rasmussen
City Clerk
City of San Bruno
567 El Camino Real
San Bruno, CA 94066

Re: Your Request for Advice
Our File No. I-86-037

Dear Ms. Rasmussen:

You have requested Informal Assistance to provide you with guidance as to how to advise your filers with respect to disclosure of receipt of free Cable TV ("CATV") services from the City-owned CATV service. The facts upon which your inquiry is based are as follows.

FACTS

The City of San San Bruno owns and operates its own CATV service. The service is provided to residents of the City for a monthly service charge, which varies in amount in accordance with the particular services provided. "Promotional Service" is provided, without charge, to certain locations within the City. These locations include TV repair shops which repair the receiver units and need this service in order to test their repair work. "Promotional Service" is also provided to the CATV staff members so that they may regularly monitor the system for problems. In addition, since 1983, the Mayor and members of the City Council have received "Promotional Service" to enable them to monitor the operation of the system and to respond to citizen questions or complaints relative to program quality or content. Thus far, the City Council has never adopted a formal, public resolution authorizing its members to receive "Promotional Service."

QUESTION

You have asked whether the receipt of the "Promotional Service" in the past by the Mayor and councilmembers

constituted receipt of a gift from the City and whether the prospective receipt of future "Promotional Service" would be a gift if the Council formally adopted a resolution authorizing "Promotional Service" to their homes.

CONCLUSION

The past receipt of "Promotional Service" without formal authorization constituted a gift of that service from the City to the councilmembers and must be disclosed on their respective Statements of Economic Interests for those periods for which the value of services received equalled or exceeded \$50. If authorized in the future by formal Council resolution, the "Promotional Services" would be considered a part of the councilmember's compensation from the City and would not be reportable, pursuant to Government Code Section 82030(b)(2).

ANALYSIS

The Political Reform Act (the "Act")^{1/} requires that public officials, such as the councilmembers, disclose certain types of income and gifts. Section 87207(a). However, in order to determine which interests are required to be reported pursuant to Section 87207(a), we must first refer to the definitional sections of the Act.

Section 82030(a) defines what constitutes "income" for purposes of the Act. As can be seen from the following quotation, the definition is quite broad and includes "gifts" as a subcategory.

(a) "Income" means, except as provided in subdivision (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

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

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.

Section 82030(a).
(Emphasis added.)

"Gifts" are defined separately in Section 82028, as follows, and are required to be reported separately from other types of income by Section 87207(a).

(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;

* * *

Section 82028.

As can be seen from the foregoing definitions, the receipt of the free CATV "Promotional Service" constitutes a gift within the meaning of the Act and reporting is required for any gift of \$50 or more during the reporting period. Section

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87207(a). Thus, the past receipt of these services is reportable if the value of the services is \$50 or more. From your correspondence (copy attached) it is clear that, with one exception, the gifts are reportable.

Despite the foregoing analysis, certain payments received by public officials are not considered to be "income" within the meaning of the Act. These exceptions to the definition of "income" are found in Section 82030(b). Of particular interest here is Section 82030(b)(2).

(b) "Income" also does not include:

* * *

(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.

Section 82030(b)(2).

Thus, a public official need not disclose his or her public agency salary or travel reimbursements. The Commission has interpreted this exception on several occasions to allow an official to receive certain "perks" of office and exclude them for reporting purposes as part of the "consideration" paid to the official by his or her agency for performing his or her official duties. The Commission has permitted this in such instances as a parking space provided in the agency's lot for the official's use when on agency business. Another example involved the use of a city-owned box at baseball games where the city had a policy of attendance by councilmembers to observe the operation of the city-owned stadium. However, in each instance, the Commission considered that it was important that the receipt of the "perk" be in accordance with an official, formally-adopted, and publicly-available policy of the agency.

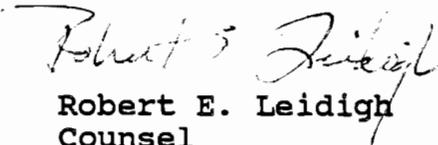
Therefore, in the instant case, if the City Council adopts a formal policy, by way of resolution, order, etc., to compensate the Mayor and councilmembers with the "perk" of the free "Promotional Service" from the CATV operated by the City, so that the Mayor and councilmembers can better serve the City's residents, such service would not be required to be reported. The public will already be informed of the receipt of such service.

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Lastly, you have asked about the procedure for amending past Statements of Economic Interests. Amendments are specifically encouraged by the Act. Section 81004.5. I enclose several copies of the appropriate form for your future use. One is required for each Annual Statement being amended and the year that the amendment covers should be clearly indicated on each statement.

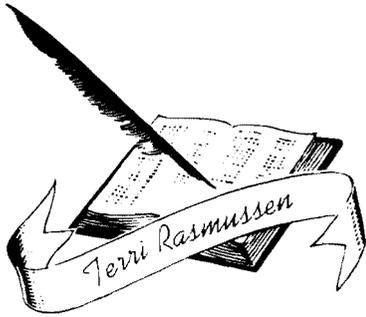
I trust that this letter adequately responds to the questions posed by your correspondence. Should you have any questions regarding this letter, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosures
cc: City Attorney Galligan



City of San Bruno

MAR 3 8 21 AM '86

City Clerk

February 28, 1986

Robert E. Leidigh, Esq.
Legal Division
California Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804-0807

Re: Your File No. 1-86-037
CATV Promotional Service - Councilmembers

Dear Mr. Leidigh:

We wish to acknowledge receipt of your February 19, 1986 Advice Letter concerning the above referenced matter.

Please note that on January 27, 1986 the San Bruno City Council by Minute Order formally adopted a policy providing CATV promotional service to Councilmembers except that Councilmembers shall pay the basic cable rate (currently \$9/month).

Thank you for providing the appropriate forms for amending past Statements of Economic Interests. Pursuant to your advice, we will forward the completed forms in the next few weeks.

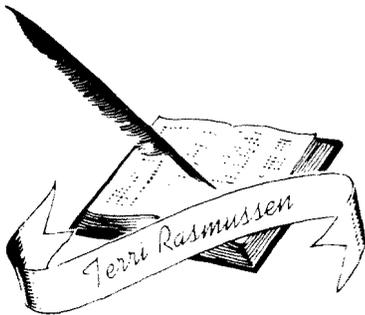
My personal thanks for clarifying this matter so promptly!

Sincerely yours,

CITY OF SAN BRUNO

Terri Rasmussen
City Clerk

cc: Mayor/Councilmembers



City of San Bruno

January 27, 1986

JAN 30 8 35 AM '86

City Clerk

Robert Leidigh, Esq.
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Form 721 Filing Requirements

Dear Mr. Leidigh:

Pursuant to our telephone conversation on January 22, 1986, the attached information was prepared by our Director of CATV concerning "promotional accounts".

We wish to emphasize that our cable system is the only publicly owned system in California. Therefore, we assumed the value of such service was not reportable because it permitted our Councilmembers to monitor programs on the system at no additional cost to the City. San Bruno also owns its water and sewer utilities. However, Councilmembers pay for these utilities because there is a direct cost to the City to provide the water and treating waste discharged into the system. There is no direct cost in providing the cable signal.

Is it necessary for the Council to amend their Form 721 filings for calendar years 1983 and 1984? If it is, please advise the "simplest way to accomplish same.

Also, please consider this correspondence my "official request" concerning future Form 721 filing requirements, i.e., is it necessary for Councilmembers to report the value of such service as a "gift" after the Council formally adopts a policy at a regular meeting approving promotional service status to Councilmembers?

Thank you for your assistance last week. Don't hesitate to contact my office or our Director of CATV, Dave Thomas (877-8889) if you need further information.

Sincerely yours,

CITY OF SAN BRUNO

Terri Rasmussen
City Clerk

Attachment

cc: City Attorney Galligan (w/attach)
Director of CATV Thomas (w/attach)

SAN BRUNO MUNICIPAL CABLE TV

567 El Camino Real · San Bruno, California 94066

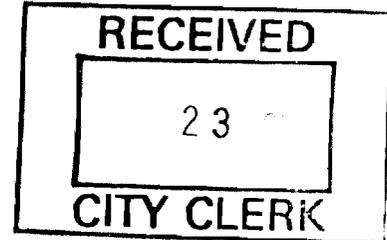
Telephone 415/877-8889

January 23, 1986

TO: Terri Rasmussen
City Clerk

FROM: Dave Thomas
Director of Cable Television

SUBJECT: Promotional Accounts



Promotional service to the Mayor and council was started in February of 1983. Each member of the council was provided with a converter so that they could monitor the services being offered on the cable system. Mayor Marshall, Council Members Simon and Ricci were already subscribers to HBO therefore only Showtime was provided on a promotional basis. The value for these three individuals for the calendar year was \$88.00. Council Member Pallas was not a Home Box Office subscriber therefore he was provided both services with the value being \$176.00 for the 1983 calendar year. Council Member Barnard was elected and took office in November of 1983. The Showtime service was only provided for a two month period in 1983. This amounts to \$16.00 for the 1983 calendar year. The same situation occurred during the 1984 calendar year. Amounts for Mayor Marshall, Council Members Barnard, Ricci and Simon was \$96.00 for 12 months. Council Member Pallas's amount for this same 12 month period was \$192.00.

During the 1985 calendar year a rate increase was effected and later in the year each was converted to full promotional services as the rebuild passed each of their private residences. The amounts for each is based from January 1, 1985 to their individual conversion day.

Those amounts are as follows:

Mayor Marshall	1-1-85 to 10-16-85 (9½ mo's)	\$ 95.00
	10-17-85 to 12-31-85 (2½ mo's)	<u>125.00</u>
	1985 calendar year total	\$ 220.00
Council Member Barnard	1-1-85 to 10-17-85 (9½ mo's)	\$ 95.00
	10-18-85 to 12-31-85 (2½ mo's)	<u>125.00</u>
	1985 calendar year total	\$ 220.00
Council Member Simon	1-1-85 to 10-1-85 (9 mo's)	\$ 90.00
	10-2-85 to 12-31-85 (3 mo's)	<u>150.00</u>
	1985 calendar year total	\$ 240.00
Council Member Ricci	1-1-85 to 10-17-85 (9½ mo's)	\$ 95.00
	10-18-85 to 12-31-85 (2½ mo's)	<u>125.00</u>
	1985 calendar year total	\$ 220.00

Council Member Pallas	1-1-85 to 11-1-85 (10 mo's)	\$ 200.00
	11-2-85 to 12-31-85 (2 mo)	<u>100.00</u>
	1985 calendar year total	\$ 300.00

Rates for Home Box Office and Showtime during 1983 and 1984 were each \$8.00 monthly. These rates went to \$10.00 on January 1, 1985. Each Council member was provided with a super pac cable service on a promotional basis on the dates indicated in the fall of 1985. These services were not requested by the Mayor or council but were provided by the department to enable the Mayor and council to respond to system problems or inquiries about program content as necessary. All other services requested beyond the primary outlet are billed at the current rates established on January 1, 1985.

Council members are more often contacted about program content rather than technical performance of the system. Having this outlet allows them to monitor the programming and provide the caller with an immediate response.

Cable staff members routinely observe problems in the system before they reach the level that would be noticed by the subscriber. Many times problems are communicated between cable employees with standby personnel effecting repairs after hours and on weekends.

Local television repair shops are provided an outlet to check the repaired receivers prior to returning them to the customers home. Once it is determined to be working properly it is then assumed it will function in the same manner at the customers home. This arrangement saves the department many service calls as the repair technician is familiar with our system.

The purpose of the promotional account status is to provide one outlet to these accounts so that they may monitor the system to ensure that it's operating as intended at all times. Cable and Council members are often contacted at home regarding the quality or content of particular programs. Having this outlet in the home provides the access point for these individuals to assess the problems.



California Fair Political Practices Commission

January 30, 1986

Terri Rasmussen
City Clerk
567 El Camino Real
San Bruno, CA 95066

Re: 86-037

Dear Ms. Rasmussen:

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,

A handwritten signature in cursive script that reads "Robert E. Leidigh".

Robert E. Leidigh
Counsel
Legal Division

REL:plh
cc: City Attorney Galligan