



FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807
(916) 322-5660 • Fax (916) 322-0886

September 22, 1998

Dominica Mahler
West Group
601 Opperman Drive
Eagan, MN 55123

Re: Our File No. A-87-100

Dear Dominica:

Please **replace** the current summary in the CA-ETH database with the following: "The conclusion to Question #2 is reconsidered in and superseded by A-87-141."

Please call me at (916) 322-5660 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Tara L. Stock".

Tara L. Stock
Legal Secretary

:tls



California
Fair Political
Practices Commission

June 16, 1987

Larry T. Combs
Sutter County Administrative Officer
463 Second Street
Yuba City, CA 95991

Re: Your Request for Advice
Our File No. A-87-141

Dear Mr. Combs:

You have requested further consideration of our previous advice letter (No. A-87-100) concerning your disclosure responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Are you required to disclose a gift to your spouse of the free use for one week of a condominium in Hawaii, which you shared the use of, when there was no intent by the donor to give a gift to you?

CONCLUSION

You are not required to disclose the gift to your spouse because the facts show that there was no intent by the donor to give a gift to you.

FACTS

In your letter of May 15, 1987, you provide additional information regarding the gift of the free use of a condominium in Hawaii which was given to your spouse and to a business associate of your spouse. You indicate that there was no discussion between your spouse and the donor of the gift concerning whether you or any other specific person might share the use of the condominium. The donor was asked by your spouse and the other recipient for permission to share the condominium with "girlfriends" or "spouses." There was no discussion between your spouse and the

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code unless otherwise indicated.

donor regarding you as a specific recipient of the gift. Your spouse and her business associate decided who each might invite to share use of the condominium. You and your spouse used the condominium for seven days and four others used it for three days at the same time. You indicate that your contact with the donor is primarily through the business association that the donor had with your spouse and that you are only casually acquainted with the donor.

ANALYSIS

The Commission has ruled previously that gifts to a filer's spouse or dependent children are not reportable on a filer's statement of economic interests. (Cory Opinion, 2 FPPC Opinions 48.) The interpretation on this point in Cory Opinion has since been codified in Regulation 18726.2. However, as the Cory Opinion explains, a gift to a filer's spouse or dependent children might constitute a gift within the meaning of the Act, if:

1. The nature of the gift is such that the official is likely to enjoy direct benefit or use of the gift to at least the same extent as the ostensible donee;
2. The official in fact enjoys such direct benefit or use; and
3. There are no additional circumstances negating the donor's intent to make a gift to the official.

Cory Opinion, 2 FPPC Opinions at 51.

The Cory Opinion provides the following guidance regarding additional circumstances which would negate the donor's intent to make a gift to the official:

Even where it is apparent from the nature of the gift that the official will benefit from the gift and the official, in fact, has used the gift, we believe that additional facts may negate the donor's intent to make a gift to the official. In particular, the existence of a working or social relationship between the donor and the spouse or child will rebut any inference that the donor intended to make a gift to the official. Such a relationship would exist if, for example, the spouse of an official received a retirement gift from his or her employer or from a personal friend who is unacquainted or only casually acquainted with the official. Such a relationship would indicate that the donor did not intend to make a gift to the official. In these situations, the official has not received a gift even if the nature of the gift is such that the official is likely to enjoy direct benefit of the gift and in fact he or she did enjoy such benefit.

Cory Opinion, 2 FPPC Opinions at 52.

Although your use of the condominium was a direct benefit to you, the facts indicate that the donor intended to give the gift to your spouse and did not intend to give the gift to you. There was no reference by the donor to a gift for you. Furthermore, a working relationship exists between the donor and your spouse. You are only casually acquainted with the donor.

Therefore, you are not required to report the use of the condominium on your statement of economic interests because the use of the condominium was controlled by your spouse and, hence, the gift to you was a gift from your spouse. A gift from one's spouse is not a "gift" within the meaning of the Act. (Section 82028(b)(3).)

If you have any questions regarding the advice in this letter, please call me at (916) 322-5662.

Sincerely,

Diane M. Griffiths
General Counsel

Bruce W. Robeck

By: Bruce W. Robeck
Political Reform Consultant

DMG:BWR:kmt



California Fair Political Practices Commission

May 1, 19878

Larry T. Coombs
Sutter County Administrative Officer
463 Second Street
Yuba City, CA 95991

Re: Your Request for Advice
Our File No. A-87-100

Dear Mr. Coombs:

You have requested advice concerning your disclosure responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. Must a filer disclose a gift to his spouse of an airplane ticket to Hawaii which was given for her use exclusively?
2. Must a filer disclose a gift to his spouse of the free use for one week of a condominium in Hawaii when the filer is expressly permitted to share the use of the condominium with his spouse?

CONCLUSIONS

1. When the spouse of a filer is given a gift of an airplane ticket to Hawaii for her exclusive use, then the filer does not have to disclose the gift on his statement of economic interests.
2. When the spouse of a filer is given a gift of the free use for one week of a condominium in Hawaii and the filer is expressly permitted to share the use of the condominium, then the filer must disclose the gift on his statement of economic interests.

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

FACTS

You are required to file an annual statement of economic interests, Form 721. (Sections 87200, 87203.) Your community property interest in the income of your spouse is included within the definition of income which you may be required to disclose. (Sections 87207, 82030(a).)

Your spouse engaged in some work for a business firm during 1986. She received reimbursement for her expenses but little or no direct compensation for her services from the firm. One client of the firm for whom your spouse performed uncompensated services, offered your spouse a payment in the form of an airplane ticket to Hawaii and the free use of a condominium in Hawaii for a period of one week. It was made clear by the client that the airplane ticket was for your spouse's exclusive use but that your spouse was free to share the condominium with you.

On your statement of economic interests which you filed for 1986, you did not disclose the gift to your spouse of the airplane ticket nor of the use of the condominium.

ANALYSIS

Before we may advise you regarding your filing requirements, it must be determined how to classify the payment your spouse received. The payment might be a "gift," as you characterized it in your letter, or it might be compensation for services. This issue must be resolved first because the reporting requirements are different for these two types of payments.^{2/}

According to the information supplied in your letter, your spouse received an airplane ticket to Hawaii and free use for one week of a condominium in Hawaii. The ticket and the use of the condominium are payments within the meaning of Section 82044. Income is defined to include: "...a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift ... and including any community property interest in income of a spouse." (Section 82030(b), emphasis added.) Although a gift is a form of income, there is a specific statutory meaning to "gift" which distinguishes it from other types of income. A gift is "... any payment to the extent that consideration of equal or greater value is not received...." (Section 82028(b).)

^{2/}Among other essential differences: gift and non-gift types of income have different thresholds for reporting (\$50 versus \$250); gifts are reportable regardless of the geographic location of the source but other income sources must be from the filer's jurisdiction; and gifts to a filer's immediate family usually are not reportable but one half of a spouse's income may be reportable.

We do not know the extent of the services rendered by your spouse for the client who gave her the ticket and the use of the condominium. However, from the context of the situation as you report it, it appears that the payment was considered by all parties to be a token of appreciation rather than compensation for services of equal or greater value. Therefore, the analysis of your reporting obligations which follows assumes that the payment to your spouse qualifies to be treated as a gift.^{3/} If you believe the assumption we have made concerning the value of the services rendered is incorrect, please feel free to contact us with additional facts.

A gift to the spouse of a filer is not a gift to the official "... unless used or disposed of by the official or given by the recipient member of the official's immediate family to the official for disposition or use at the official's discretion." (Regulation 18726.2(a).) A single airplane ticket given to the filer's spouse and used by her cannot be a gift to the filer, and therefore, it is not reportable on his statement of economic interests.

However, a gift of the free use of a condominium in Hawaii for a period of one week, which the spouse is expressly permitted to share with the filer, is a gift to the filer which is reportable on his statement of economic interests. Unless there are additional facts which you care to supply, we believe that the portion of the Cory Opinion which you cited in your letter does not apply to your situation because the client expressed an intent to give a gift to both your spouse and to you. Because the gift was given to you through your spouse, you should report your one-half value of the use of the condominium as a gift from the client with your spouse as the intermediary for the gift. (Sections 82028(b)(3), 87207(b)(1), 87210; Regulation 18726.2(a), and Cory Opinion, supra.)

You did not include the gift of the condominium on your statement of economic interest for 1986, therefore, you must file an amendment to your Form 721, Schedule F. Enclosed is a supplemental Schedule F which should be completed as soon as possible and filed with your filing official (who should make and retain a copy and forward the original to the Commission within five days).

^{3/}The Cory Opinion (2 FPPC Opinions 48), which you cite in your letter, does discuss situations in which an official's spouse might have received a nonreportable gift. However, a Commission regulation has been adopted recently which clarifies the issue of reporting gifts to a filer's immediate family. (Regulation 18726.2.)

Larry Coombs
Page 4

If you have any questions regarding the advice in this letter,
please call me at (916) 322-5662.

Sincerely,

Diane Griffiths
General Counsel

Bruce W. Robeck

By: Bruce W. Robeck
Political Reform Consultant

Enclosure
DMG:BWR:kmt



California Fair Political Practices Commission

May 1, 19878

Larry T. Coombs
Sutter County Administrative Officer
463 Second Street
Yuba City, CA 95991

Re: Your Request for Advice
Our File No. A-87-100

Dear Mr. Coombs:

You have requested advice concerning your disclosure responsibilities under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTIONS

1. Must a filer disclose a gift to his spouse of an airplane ticket to Hawaii which was given for her use exclusively?
2. Must a filer disclose a gift to his spouse of the free use for one week of a condominium in Hawaii when the filer is expressly permitted to share the use of the condominium with his spouse?

CONCLUSIONS

1. When the spouse of a filer is given a gift of an airplane ticket to Hawaii for her exclusive use, then the filer does not have to disclose the gift on his statement of economic interests.
2. When the spouse of a filer is given a gift of the free use for one week of a condominium in Hawaii and the filer is expressly permitted to share the use of the condominium, then the filer must disclose the gift on his statement of economic interests.

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

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On your statement of economic interests which you filed for 1986, you did not disclose the gift to your spouse of the airplane ticket nor of the use of the condominium.

ANALYSIS

Before we may advise you regarding your filing requirements, it must be determined how to classify the payment your spouse received. The payment might be a "gift," as you characterized it in your letter, or it might be compensation for services. This issue must be resolved first because the reporting requirements are different for these two types of payments.^{2/}

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We do not know the extent of the services rendered by your spouse for the client who gave her the ticket and the use of the condominium. However, from the context of the situation as you report it, it appears that the payment was considered by all parties to be a token of appreciation rather than compensation for services of equal or greater value. Therefore, the analysis of your reporting obligations which follows assumes that the payment to your spouse qualifies to be treated as a gift.^{3/} If you believe the assumption we have made concerning the value of the services rendered is incorrect, please feel free to contact us with additional facts.

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You did not include the gift of the condominium on your statement of economic interest for 1986, therefore, you must file an amendment to your Form 721, Schedule F. Enclosed is a supplemental Schedule F which should be completed as soon as possible and filed with your filing official (who should make and retain a copy and forward the original to the Commission within five days).

^{3/}The Cory Opinion (2 FPPC Opinions 48), which you cite in your letter, does discuss situations in which an official's spouse might have received a nonreportable gift. However, a Commission regulation has been adopted recently which clarifies the issue of reporting gifts to a filer's immediate family. (Regulation 18726.2.)

Larry Coombs
Page 4

If you have any questions regarding the advice in this letter,
please call me at (916) 322-5662.

Sincerely,

Diane Griffiths
General Counsel

Bruce W. Robeck

By: Bruce W. Robeck
Political Reform Consultant

Enclosure
DMG:BWR:kmt



California Fair Political Practices Commission

April 3, 1987

Larry T. Combs
County Administrative Officer
County of Sutter
463 Second Street
Yuba City, CA 95991

Re: 87-100

Dear Mr. Combs:

Your letter requesting advice under the Political Reform Act was received on April 2, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Jeanne Pritchard".

Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh

County of Sutter

F P F ... established 1850

APR 2 9 05 AM '87

Office of the County Administrator

March 31, 1987

State of California
Fair Political Practices Commission
P. O. Box 807
Sacramento, CA 95804-0807

Attention: Legal Division
Kathryn Donovan

Dear Ms. Donovan:

I am addressing this letter to you because we have spoken before regarding my wife's firm, WhitCom & Associates. If this matter would not be appropriate for your review, please refer it to the appropriate person.

In completing my Form 721 for 1986-87, I have come across an issue on which I would like your opinion. It involves Schedule F-Gifts. Based on my reading of the Manual and Instructions, I do not consider this to be reportable. I have discussed this matter with our County Counsel, Darrell Larsen, and he concurs with my conclusion. I have, therefore, not included it on my filing. I felt, however, that I wanted to have the further benefit of your advice on this issue.

The facts are as follows:

My wife, Judy Combs, is a partner in WhitCom & Associates, a Marketing, Public Relations, and Management Consulting firm. (I have properly reported all factors relating to that business.) Prior to the starting of her firm, in October of last year, she was associated with another firm of the same type. This association was almost totally volunteer, with expenses paid, but little else.

One of the clients of that firm owns a weight reduction/diet business. Judy did some work for the client and she was very appreciative. Partially, I believe, because Judy was not being compensated, the client offered her a gift of airfare and a week stay in a condominium in Hawaii during the month of June. The condominium was a time-share plan membership which the client would be unable to use. As part of their discussion, she made it clear that the gift was only for Judy and that if anyone else, such as her husband, went, that they had to pay their own airfare. She was free, however, to share the condominium.

Fair Political Practices Commission
March 31, 1987
Page 2

My reasoning for not feeling that this is a reportable item is that the gift was strictly to my wife. Schedule F, as contrasted with other Schedules, reflects only a reference to gifts to the reporting party instead of "you or your immediate family" or "you or your spouse." Furthermore, in our research, we noted your Opinion No. 75-094-A (2 FPPC Opinions 48). In that opinion, we noted that in your Statement of Conclusion, number 3 provides an exception that appears to apply here. Specifically, the gift was specifically stated by the donor to be to, and for, my wife only. We also noted that the third paragraph on page 5 appears to provide a fairly definitive exception that clearly applies, to wit "In particular, the existence of a working or social relationship between the donor and the spouse or child will rebut any inference that the donor intended to make a gift to the official." That is clearly the case here, as I explained.

One other factor that may be pertinent to your consideration is that, to my knowledge, neither the donor nor her firm has any business relationship with the County.

The facts seem fairly clear to us, but as I noted earlier, I would like to have the benefit of your advice based on the specific factors in this case. I would appreciate your consideration, and response, as to whether the gift to my wife that I described is reportable on Schedule F. If you have any questions, please call me at (916) 741-7100.

Sincerely,



LARRY T. COMBS
County Administrative Officer

LTC:pb

Memorandum

To : Vance Raye
Office of the Governor

Date : March 23, 1987

From : FAIR POLITICAL PRACTICES COMMISSION
Diane M. Griffiths, General Counsel

Subject : Reporting Free Meals During International Travel on Official
Business
Our File No. A-87-091

This memorandum will confirm our telephone conversation of March 20, 1987, concerning reporting of free meals received during international travel on official state business.

The facts provided to me were as follows: The Governor traveled to Japan on official state business. Some staff members traveled with the Governor, also on official state business. Official duties included attending certain lunch and dinner functions. Staff did not claim per diem, nor did they pay for meals at such functions. The Japanese government hosted some events. Various Japanese business entities hosted the others. The Governor was asked to, and did, speak at virtually all of these functions.

Commission Regulation 18728(a) (2 Cal. Adm. Code Section 18728(a)) applies to events at which the Governor spoke. That regulation provides that free food, beverages and similar nominal benefits provided to an official at an event at which he speaks need not be reported. Under this regulation, the Governor is not required to report free meals he received if he gave a speech in connection with the meal.

The Commission has previously advised that free meals provided by a foreign government are gifts even if received during official business travel to that foreign nation. (See Advice Letter to Hon. Larry Stirling, No. A-85-045, a copy of which has been provided to you.) They must be reported if they equal or exceed \$50 in value. Except as noted in the paragraph which follows this one, this rule applies to free meals provided to staff and to the Governor if he did not give a speech.

Vance Raye
March 23, 1987
Page 2

When an official travels on official state business to a foreign nation, he or she may be expected to attend certain ceremonial state functions. Custom may dictate that meals will be served at such functions, and the hosting nation may not expect or accept reimbursement for the cost of the meals. Under these circumstances, free meals received by public officials need not be reported. This exception applies to free meals received by the Governor and his staff at ceremonial dinners hosted by the Japanese government. It would not apply to meals provided by Japanese business entities, nor to routine meals provided by the government.

DMG:plh

McDONOUGH, HOLLAND & ALLEN
A PROFESSIONAL CORPORATION
ATTORNEYS

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(916) 444-3900

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MAR 23 4 19 1987
OAKLAND OFFICE
P. O. BOX 3448
OAKLAND, CALIFORNIA 94609
(415) 547-0106

DAVID F. BEATTY

March 23, 1987

ARTHUR H. BERNSTEIN
OF COUNSEL

HAND DELIVERED

Ms. Diane Griffiths
General Counsel
Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804

Dear Diane:

I have been discussing the question I raise below with the technical assistance division who suggested I write you. I do not need a written response and would be happy to talk to you or anyone on your staff on the telephone if that would be more expeditious.

A client has hired our firm to write a proposed initiative measure to be submitted to a City Council and then if not passed by the City Council, the electorate of the city. We have also given advice as to the proper procedure to follow.

The question is:

Are the fees paid by the client for the purpose of drafting the initiative measure and providing procedural advice, all of which are incurred prior to circulation of the petition for signatures in order to qualify the measure, campaign expenditures? If the client later requests persons to reimburse the client for all or a portion of these legal fees, are these campaign contributions?

In brief, the procedure to enact an ordinance pursuant to the initiative procedure in a city is as follows:

1. A notice of intention to circulate an initiative is published in a newspaper or posted (Election Code Section 4002).