



# 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").<sup>1/</sup>

## 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

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<sup>1/</sup>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



By: Bruce W. Robeck  
Political Reform Consultant

DMG:BWR:kmt



# California Fair Political Practices Commission

May 18, 1987

Larry Combs  
Sutter County Administrator  
463 Second Street  
Yuba City, CA 95991

Re: 87-141

Dear Mr. Combs:

Your letter requesting advice under the Political Reform Act was received on May 14, 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 if your request seeks formal written advice. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).) 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,

*Jeanne Pritchard*  
Jeanne Pritchard  
Chief  
Technical Assistance and Analysis  
Division

JP:plh



# California Fair Political Practices Commission

May 18, 1987

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463 Second Street  
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Very truly yours,

A handwritten signature in cursive script that reads "Jeanne Pritchard" followed by a small flourish.

Jeanne Pritchard  
Chief  
Technical Assistance and Analysis  
Division

JP:plh

# County of Sutter

...established 1850

## Office of the County Administrator

May 15, 1987

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

Attention: Bruce W. Robeck

Re: File No. A-87-100

Dear Mr. Robeck:

I appreciate your rapid response to my request for advice. Per our conversation this morning, however, I feel that there is a misunderstanding of facts that I need to correct.

In reading the conclusions stated in your letter of May 1, I was not unduly surprised. However, upon reading the body of the material, as well as referring to my statement of facts that I submitted to you, I found that there was a misunderstanding of a key point, which led to your second conclusion.

In my effort to be brief and concise, I did not lay out the entire scenario of the offering of the gift to my wife. The gift of the use of the condominium was offered to my wife and one of the principals of the firm that she worked with, along with the gift of the airfare for my wife. A discussion then took place between my wife and her boss as to whether to invite several lady friends, with my wife also indicating that she wanted me to go. The person offering the gift was then approached with the question: "May we take others along, such as girlfriends, spouses, etc." The response was that the donor did not care who went, but that she would pay airfare for only my wife. The end result was that my wife and I stayed in the condominium alone for four days and nights and were then joined by four other persons for another three nights.

Thus, as you can see, there was not a situation where the gift of use of the condominium to my wife was one that she "was expressly permitted to share" with me. The gift was one that both recipients were allowed to share with anyone they wished. I am certain that this was not intended as a gift to me, either directly or through my wife, and my wife concurs in my opinion.

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Practices Commission  
May 12, 1987  
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I would also like to make it clear that the only relationship that I have ever had with the doner was through my wife. She is not a client of my wife's current firm, and we are not even social friends. I would consider that I have the same business relationship with her that I have with many of the people in the local business community. To my knowledge neither she, nor her business, had any business relationship with the County.

I would appreciate your review of this additional information, which appears to be pertinent to your second conclusion. Because you indicated during our conversation that this information may affect your conclusion, I have not filed an amendment to my Form 721. I will wait for your response in order to determine whether to do so.

If you have any questions, please call me at (916) 741-7100.

Sincerely,



LARRY T. COMBS  
County Administrative Officer

LTC:pb

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# County of Sutter

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## Office of the County Administrator

May 15, 1987

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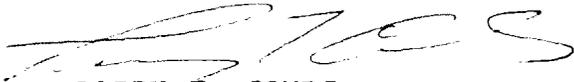
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