



# California Fair Political Practices Commission

June 17, 1988

Sharon Levy  
Board of Supervisors  
Hall of Records, Room 300  
2281 Tulare Street  
Fresno, CA 93721-2198

Re: Your Request For Advice  
Our File No. A-87-222

Dear Ms. Levy:

Recently, we discovered an error in our advice letter to you of November 25, 1987.

The error is on page 4. The correct method for determining your prorated share of Gottschalks' investment interests in another business entity is to multiply the percentage of Gottschalk's investment in the other business by the percentage of your investment interest in Gottschalks. If your investment interest in the other business were worth \$1,000 or more, you would have to disclose that business on Schedule C-2.

I am sorry for the mistake. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths  
General Counsel

*Margarita Altamirano*  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:aa



# California Fair Political Practices Commission

September 9, 1987

Sharon Levy  
Board of Supervisors  
Hall of Records, Room 300  
2281 Tulare Street  
Fresno, CA 93721-2198

Re: Your Request for Advice  
Our File No. A-87-222

Dear Ms. Levy:

You have requested advice regarding your duties under the Political Reform Act. To respond fully to your request, we need additional information.

In your letter you said that you, your husband, and your children own more than 10 percent of Gottschalks department store. Your secretary told us that you and your husband currently own 22 percent and your adult children own 13 to 14 percent. Under the law, the holdings of your nondependent children are not attributed to you.

You have asked for advice regarding the years 1981 through 1985. For us to advise you about your filing duties for 1981 to 1985, you should tell us the percentage of ownership interest you, your husband, and each dependent child held during each of the relevant years. If you have the same question concerning your filing responsibility in 1986, you should provide us with the same information for that year.

I hope to hear from you soon. Please call me at (916) 322-5901 if you have any question regarding this request.

Sincerely,

Diane M. Griffiths  
General Counsel

By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:plh

Oct 22 9 35 AM '87

October 19, 1987

Re: File No. A-87-222

Dear Ms. Altamirano:

I apologize for the delay in returning with the information, also for it being in longhand. My assistant is on vacation and I do not type! I hope that you can read this -

In regards to ownership of Potchell's Dept. Stores -

(Over)

1981	My husband (Judy) & (Sharon) together	-	5%
1982	" " "	-	30%
1983	" " "	-	29%
1984	" " "	-	28%
1985	" " "	-	27%
1986	" " "	-	22%

---

1981	Bret, a dependent child -	1%
1982	"	- 1 1/2%
1983	"	- 2%
1984	"	- 2 1/2%
1985	"	- 3%
1986	"	- 4%

Please call me if you have any questions. Thank You. Sincerely C. F.



# California Fair Political Practices Commission

November 25, 1987

Sharon Levy  
Board of Supervisors  
Hall of Records, Room 300  
2281 Tulare Street  
Fresno, CA 93721-2198

Re: Your Request for Advice  
Our File No. A-87-222

Dear Ms. Levy:

You have requested advice about the application of the Political Reform Act (the "Act")<sup>1/</sup> to your duty to identify and report economic interests. Thank you for sending me the information I requested, which I received on October 22, 1987.

## QUESTIONS

1. Are you required to identify and report all persons who pay \$10,000 or more to Gottschalks department store in which you have an ownership interest of 10% or more?
2. What is your obligation to know if a person appearing before the board of supervisors is a customer who has paid an amount to Gottschalks that would provide you on a prorated basis with \$250 of income?

## CONCLUSION

1. You are required to disclose on your statement of economic interests every person situated in or doing business in your jurisdiction, who pays to Gottschalks in a calendar year an aggregate amount that would provide you on a prorated basis with \$10,000 or more of the gross receipts.
2. The standard for knowing or having reason to know that you have a financial interest in a decision is that of a reasonable person under the same circumstances.

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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.

FACTS

You are a member of the Fresno County Board of Supervisors. In 1981 you and your husband owned 5% and your dependent child Bret owned 1% of Gottschalks department store.

Since 1982 you and your husband have owned the following amounts of shares in Gottschalks:

1982.....	30%
1983.....	29%
1984.....	28%
1985.....	27%
1986.....	22%

Your and your husband's ownership interest in Gottschalks has been more than 10% from 1982 through 1986.

During the same years your dependent son Bret owned the following percentages of ownership interest in Gottschalks:

1982.....	1.5%
1983.....	2 %
1984.....	2.5%
1985.....	3 %
1986.....	4 %

Gottschalks has more than 275,000 active charge accounts. You do not know how many customers have spent \$10,000 or more at Gottschalks. You believe you have no way of knowing how much the persons who appear before the board of supervisors have spent at Gottschalks.

ANALYSIS

Disclosure of Income

Section 87207 requires you to disclose sources of income that meet threshold requirements. Income includes: "a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater." (Section 82030(a).)

To comply with subsection (a) of Section 87207 you were required to name Gottschalks as a source of income for the years 1981 through 1986. Gottschalks undoubtedly provided you with \$250 or more of gross income in each of those years. In your statements you also were required to report whether the

Sharon Levy  
November 25, 1987  
Page 3

total income was more than \$250, more than \$1,000, or more than \$10,000. (See Form 721, Schedule D.)

Subsection (b) of Section 87207 also requires you to name Gottschalks as a source of income for the years in which you and your husband owned more than 10% of the company. Moreover, you must identify each person who paid Gottschalks a sufficient amount to give you a \$10,000 or more share of the gross receipts based on your and your husband's proportionate share of the receipts. (See Form 721, Schedule H-2.)

You and your husband owned less than 10% of Gottschalks in 1981, so you do not have a Section 87207(b) reporting requirement for that year.

From 1982 through 1986, however, you jointly owned more than 10% of Gottschalks. Consequently, you were required to disclose customers who paid Gottschalks amounts equal to or more than the following threshold amounts, which would provide you with \$10,000 of your prorated share of the gross receipts for each year from 1982 through 1986. We calculated the following figures by dividing \$10,000 by the percentages of ownership interest you and your husband held for those years.

1982.....	30%	=	\$33,333
1983.....	29%	=	\$34,483
1984.....	28%	=	\$35,714
1985.....	27%	=	\$37,037
1986.....	22%	=	\$45,455

As you can see, the amount required to meet the \$10,000 prorated threshold increases as the percentage of ownership interest decreases. You must use "reasonable diligence" to ascertain which customers paid Gottschalks the threshold amounts. (Section 81004; see Gyemant Advice Letter No. 76-123, copy enclosed.) On Schedule H-2 of your statement of economic interests, you must identify each person situated in or doing business in Fresno County who paid Gottschalks an amount equal to or more than the amounts above for each calendar year.

#### Disclosure of Investments

Section 87206 requires you to disclose investments in business entities situated or doing business in your jurisdiction.

Section 82034 defines an investment. Unlike Section 82030, however, Section 82034 says a reportable investment is one in which you or your immediate family owns, directly, indirectly

or beneficially a financial interest with a fair market value of \$1,000 or more in a business entity. (Emphasis added.) Section 82029 defines immediate family to include your husband and dependent children. You must disclose your investment interest in Gottschalks from 1981 through 1986 because it was worth more than \$1,000 during that period. (See Form 721, Schedule A.)

Sections 82034 and 87206 also require you to report your prorated share in an investment that Gottschalks holds in any other business entity situated or doing business in Fresno County for each year in which you own 10% or more of Gottschalks and in which your prorated share of the other business entity is worth \$1,000 or more. (See Form 721, Schedule C-2.)

In 1981, you and your immediate family owned less than 10% of Gottschalks. You do not have to report a prorated share of Gottschalks investments in other businesses for 1981 because you owned less than 10%. (Sections 82034 and 87206.)

For 1982 through 1986, however, you and your immediate family had the following investment interests in Gottschalks:

1982.....	31.5%
1983.....	31 %
1984.....	30.5%
1985.....	30 %
1986.....	26 %

Consequently, if in 1982 Gottschalks owned 23% of another business situated or doing business in Fresno County, your prorated share would have been 7% of that business. We divided Gottschalks 23% investment by your 31.5% interest to get 7%. If your 7% interest were worth \$1,000 or more, on Schedule C-2 you would have had to identify the business entity and check the appropriate box for the value of the investment.

#### Disclosure of Interests in Real Property

Section 87206 requires you to disclose interests in real property. Section 82033 defines a real property interest to include your prorated share of Gottschalks' interests in real property situated in the jurisdiction of Fresno County if you and your immediate family own more than 10% of Gottschalks and the fair market value of your prorated interest in the real property is \$1,000 or more. The "jurisdiction" of Fresno County extends to real property situated within two miles of the county's boundaries or within two miles of "any land owned or used by" the county. (Section 82035.)

Thus, if in 1982 Gottschalks had a 100% leasehold interest in a store site situated in Fresno County, you would have had a 31.5% reportable interest in that leasehold. If the value of the lease were \$10,000 your reportable interest would have been worth \$3,150. You would disclose this interest on Schedule C-1 of Form 721 and you would check the box valuing the interest between \$1,001 and \$10,000.

#### Knowing Who Is a Source of Income

Because you are a public official, you are disqualified from making, participating in, or attempting to use your official position to influence a governmental decision in which you know or "have reason to know" that you have a financial interest. (Section 87100.) You have a financial interest in a decision if it will have a reasonably foreseeable material financial effect, distinguishable from that on the public generally, on a source of income of \$250 or more. (Section 87103.) Certain Gottschalks customers may be economic interests for you.

In your letter, you wrote that you have no way of knowing if a person appearing before the board of supervisors has spent \$10,000 at Gottschalks. The threshold amount, however, for having an economic interest that might create a conflict of interest, is not \$10,000, but \$250 in income based on your proportionate share of the gross receipts.<sup>2/</sup> (Sections 82030(a) and 87103(c).)

Each year you will have to calculate the new threshold amount that will give you \$250 in prorated income from Gottschalks. For instance, in 1985, a Gottschalks customer buying \$925 or more would meet the threshold amount. In 1986, a customer would have to buy \$1,136 worth of goods or services. Again, we divided \$250 by your percentage of ownership interest to determine how much must be paid to Gottschalks to give you \$250 in gross income.

The standard for knowing if you have a financial interest in a decision before the board is if: "a reasonable person, under the same circumstances would be likely to know the

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<sup>2/</sup> Nevertheless, even if the amount of income meets this threshold, disqualification is not required automatically. You must determine if there will be a reasonably foreseeable material financial effect on the income source. (Section 87103; see discussion infra.)

Sharon Levy  
November 25, 1987  
Page 6

identity of the source of income and would be aware of the decision's probable impact on that source." (See Price Advice Letter, No. 85-165, copy enclosed.)

Gottschalks is a retail department store with more than 275,000 customers. A public official who has an ownership interest in such a business is not required to know the identity of all the store's customers. (Cohan Advice Letter, No. A-82-197, copy enclosed.) You are not required to ascertain who has paid Gottschalks the \$250 prorated amount in the preceding 12 months.

Nevertheless, if you know a person is a source of income of \$250 or more to you, you then would have to determine whether it was reasonably foreseeable that the decision before you would have a material financial effect, distinguishable from its effect on the public generally, on the source of income. (Section 87103.)

#### Reasonably Foreseeable Effect

To have a reasonably foreseeable effect, there must be a substantial likelihood that the decision will affect the source of income significantly. (Regulations 18702 through 18702.2.) An effect does not have to be certain to be foreseeable. But if an effect were a mere possibility it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed; see Witt v. Morrow (1977) 70 Cal. App.3d 817.)

#### Material Financial Effect

If the source of income "appears" before you, the decision's effect is considered material and your disqualification is required. (Regulation 18702.1, copy enclosed.) We have enclosed regulations 18702 through 18703, which provide additional guidelines for determining the material financial effect of a decision and its effect on the public generally.

#### Application of Section 87103.5

You mentioned applying Section 87103.5 to your situation so that you would not have to disclose sources of income of more than \$10,000.

Section 87103.5 creates an exception to the \$250-income disqualification rule. (Christiansen Advice Letter, No. I-87-018, copy enclosed.) This section says a retail customer is not a source of income to an official who owns 10% or more of a retail business, provided:

Sharon Levy  
November 25, 1987  
Page 7

[T]he retail customers of the business entity constitute a significant segment of the public generally, and the amount of income received by the business entity from the customer is not distinguishable from the amount of income received from its other retail customers.

Section 87103.5.

Section 87103.5, however, refers to Section 87103, dealing with disqualification. This section does not apply to disclosure of sources of income.

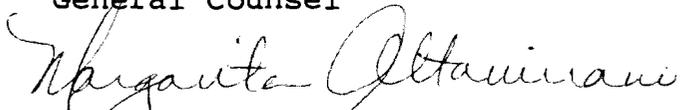
At this time we do not have enough information to advise you if your situation meets the requirements of Section 87103.5 for the purpose of disqualification. We need more information to determine whether sources of income to Gottschalks qualify for the Section 87103.5 exception. In the Christiansen advice letter, supra, we discussed the requestor's suggested method for ascertaining which retail customers paid the threshold amounts. You might use the Christiansen or another method to see if Gottschalks retail customers are covered by Section 87103.5.

In your review you should consider whether a person coming before the board, who paid Gottschalks more than \$1,000 within twelve months of the governmental decision you are to decide, is distinguishable from Gottschalks' other retail customers, especially if most other customers bought less than \$1,000 of goods. Customers whom you identified on Schedule H-2 because they paid more than \$45,000 to Gottschalks probably are distinguishable from Gottschalks' other retail customers.

I hope you now have the advice you requested. If you have a question about this letter, please call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:plh

Oct 22 3 35 PM '87

Sharon Levy  
Board of Supervisors

October 19, 1987

Re: File No. A-87-222

Dear Mr. Altamirano:

I apologize for the delay in returning with the information, also for it being in longhand. My assistant is on vacation and I do not type! I hope that you can read this -

In regards to ownership of Lottchell's Dept. Stores -

(over)

1981	My husband (Joe) (Sharon) together	-	5%
1982	" " "	-	30%
1983	" " "	-	29%
1984	" " "	-	28%
1985	" " "	-	27%
1986	" " "	-	22%

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1981	Bret, a dependent child	-	1%
1982	"	-	1 1/2%
1983	"	-	2%
1984	"	-	2 1/2%
1985	"	-	3%
1986	"	-	4%

Please call me if you have any questions. Thank You. Sincerely, Sharon Lee



# California Fair Political Practices Commission

August 12, 1987

Sharon Levy, Supervisor  
Fresno County  
2281 Tulare Street  
Hall of Records, Room 300  
Fresno, CA 93721-2198

Re: 87-222

Dear Ms. Levy:

Your letter requesting advice under the Political Reform Act was received on August 11, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, an attorney in the Legal Division, directly at (916) 322-5901.

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 more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. 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,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:jaj

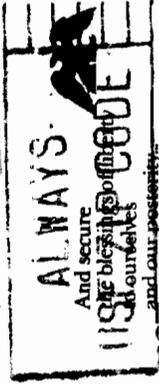
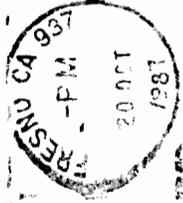
S. Lemf  
2281 Tulare St.  
Merced, California 93721

Ms. Margarita Caltamirano  
Central Legal Bureau  
California Fair Political Practices  
Commission

428 J Street  
P.O. Box 807

Sacramento, Ca. 95804-0807

Suite 800



Preamble, U.S. Constitution USA 22



# California Fair Political Practices Commission

September 9, 1987

Sharon Levy  
Board of Supervisors  
Hall of Records, Room 300  
2281 Tulare Street  
Fresno, CA 93721-2198

Re: Your Request for Advice  
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Dear Ms. Levy:

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You have asked for advice regarding the years 1981 through 1985. For us to advise you about your filing duties for 1981 to 1985, you should tell us the percentage of ownership interest you, your husband, and each dependent child held during each of the relevant years. If you have the same question concerning your filing responsibility in 1986, you should provide us with the same information for that year.

I hope to hear from you soon. Please call me at (916) 322-5901 if you have any question regarding this request.

Sincerely,

Diane M. Griffiths  
General Counsel

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By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:plh



# California Fair Political Practices Commission

September 9, 1987

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Diane M. Griffiths  
General Counsel

*Margarita Altamirano*  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:plh

87-222



AUG 10 3 13 PM '87

Sharon Levy  
Board of Supervisors

August 7, 1987

Ms. Diane Griffith  
General Counsel, Legal Div.  
Ca. Fair Political Prac. Comm.  
428 "J" Street, Suite 800  
Sacramento, Ca. 95814

Dear Ms. Griffith:

Please advise me in writing regarding disclosure of sources of income to Gottschalks Department Stores. I understand and acknowledge the intent of all disclosure requirements and offer the following for your consideration.

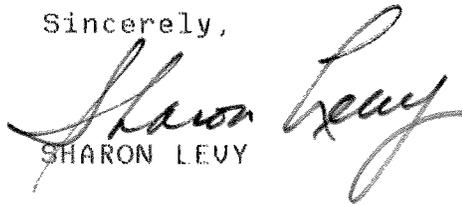
My husband, three children and I presently own, and have owned during the years in question (1981-1985), "greater than 10% " of the Gottschalks Department Stores business. We have in excess of 275,000 active charge accounts, and it would be an enormous task to comb through each of these accounts and extract those that reflect charges of \$10,000, or more.

More specifically, when people appear before the Fresno County Board of Supervisors I, personally, have absolutely no way of knowing if they are one of the 275,000 Gottschalks charge customers, or further, if they have spent \$10,000 or more.

Please advise me whether I have to disclose all sources of income to Gottschalks from customers of Gottschalks who have spent over \$10,000 under Section 87207, or would I be excluded from such disclosure based on Section 1871035 regarding income from retail sales.

Thank you for your time and energy in researching this.

Sincerely,

  
SHARON LEVY

3712I



# California Fair Political Practices Commission

June 17, 1988

Sharon Levy  
Board of Supervisors  
Hall of Records, Room 300  
2281 Tulare Street  
Fresno, CA 93721-2198

Re: Your Request For Advice  
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Recently, we discovered an error in our advice letter to you of November 25, 1987.

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General Counsel

*Margarita Altamirano*  
By: Margarita Altamirano  
Counsel, Legal Division

DMG:MA:aa