



California Fair Political Practices Commission

March 30, 1989

Luis F. Hernandez
Associate City Attorney
1243 Main Street
El Centro, CA 92243

Re: Your Request for Informal
Assistance
Our File No. I-89-118

Dear Mr. Hernandez:

Your office has been asked to seek informal assistance on behalf of an undisclosed city planning commissioner with respect to his or her reporting duties under the Political Reform Act (the "Act").^{1/} We are therefore treating your question as a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTIONS

What are the reporting requirements under the Act with respect to income real property conveyed to the spouse of a planning commissioner by her parents and subsequently reconveyed to the parents?

1. Is the planning commissioner required to disclose the receipt of the real property as a gift on Schedule F of his annual 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 Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2/ Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

2. Should the planning commissioner report these two transactions as an interest in real property, income or income from rental property on Schedule B, Schedule D or Schedule H-3 of his annual statement of economic interests (Form 721)?

CONCLUSIONS

1. The planning commissioner is not required to report the conveyance as a gift on Schedule F, because the conveyance is one that is excluded from the definition of "gift" under the Act.

2. The planning commissioner must report the transactions on Schedules B, D, or H-3 to the extent applicable, unless he can prove that the conveyance was not a completed gift and therefore no interest was transferred by the attempted conveyance.

FACTS

In April 1988, the parents of a city planning commissioner's spouse conveyed two parcels of income real property located in the city to the commissioner's spouse. These parcels were conveyed to the spouse by grant deed, without consideration, as separate property. Neither the commissioner nor the commissioner's spouse had knowledge of the conveyance until December 1, 1988.

Immediately upon learning of this conveyance, the commissioner's spouse reconveyed the two parcels of real property to the parents. It is your understanding that the parents of the commissioner's spouse did not intend to make a present transfer, but intended that the property pass to the commissioner's spouse only upon the death of both parents.

Neither the commissioner nor the commissioner's spouse received income from either property. In addition, the commissioner and the commissioner's spouse did not pay any mortgage, taxes or insurance on the two properties. Although the grant deed from the parents-in-law was recorded, neither the commissioner nor the commissioner's spouse received any notices from the county tax assessor.

ANALYSIS

Planning commissioners are persons required by the Act to file annual statements of economic interests. The commissioners must report on those statements investments, interests in real property, and income, including gifts, received since the previous annual statement. The statement must include any investments and interests held during the

reporting period, whether or not held at the time of filing. (Sections 87200 and 87203.) The proper form for use in filing the annual statement is Form 721.

Schedule F

Schedule F of Form 721 is used to disclose reportable gifts. Section 82028 defines a gift, in part, as follows:

(a) "Gift" means, except as provided in subdivision (b), any payment to the extent that consideration of equal or greater value is not received....

(b) The term "gift" does not include:

* * *

(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, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or 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.

Section 82044 defines "payment" as follows:

"Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

A review of the foregoing sections indicates that although a transfer of property without full and adequate consideration may have been made, the commissioner does not have to report the transaction on Schedule F as a gift. First of all, gifts given directly to an official's immediate family member are not gifts to the official unless used or disposed of by the official. (Regulation 18726.2 (a), copy enclosed.) Secondly, even if the property had been given directly to the commissioner, gifts from a "parent-in-law" are not included in the definition of "gift" as used in the Act, unless the parent-in-law is acting as an agent or intermediary for a reportable source of income. (Section 82028 (b) (3).) No such facts are indicated here.

Luis F. Hernandez

March 30, 1989

Page 4

Schedules B, D and H-3

Whether any reporting would be required on Schedules B, D or H-3 depends upon whether a completed gift was made which would create an ownership interest in the real property at issue. If the transfer was not completed, no ownership or investment interest was created; no income was generated to the commissioner or the commissioner's spouse; and there would be no reporting requirement.

Regulation 18726.1 sets forth the general rules regarding receipt and return of gifts. That regulation provides, in part, as follows:

(a) Receipt of a Gift or Promise of a Gift. A gift is "received by" an official when it is delivered to the official and is not disposed of pursuant to subsection (b). If a gift is only offered, but the official rejects the offer or declines to accept the gift, no gift has been received.

A gift is "provided to, received by, or promised to" an official at the time the offer is extended if the gift is offered to the official in such a manner that it is within the official's discretion whether or not to accept it and the official ultimately decides to accept the gift. A gift is deemed accepted if it is tendered and comes under the control of the recipient official and he or she neither returns it, donates it, nor reimburses the donor for it as provided in subsection (b)....

(b) General Rule for Return, Donation or Reimbursement of Gift. A gift may be returned, donated, or reimbursed by the recipient official in the following manner:

(1) The official may return the gift to the donor or his or her agent or intermediary, unused, within 30 days of receipt. In this event the official has not received a gift....

(Emphasis added, copy enclosed.)

According to the facts that you have provided, the property was conveyed to the commissioner's spouse in April of 1988, and reconveyed in December of that same year. Until December 1, 1988, the commissioner and the commissioner's spouse were unaware of the conveyance. The deed was not delivered to them. They were not informed of the

Luis F. Hernandez
March 30, 1989
Page 5

transaction, nor did they receive any official notice of the transfer such as, for example, a tax notice from the county assessor. However, you did indicate in our telephone conversation that the deed was recorded.

Proper recordation of a deed is prima facie evidence of the existence and content of the original recorded document and its execution and delivery. Furthermore, this presumption is a presumption affecting the burden of proof, so that the burden would be on the commissioner's spouse to establish nondelivery. (California Evidence Code Section 1600.) It would appear that this burden could be met under the facts as stated. The deed was never actually delivered. The commissioner and the commissioner's spouse were unaware of the conveyance.

Since they were not informed of the transfer, it cannot be said that it was offered in a manner that gave the commissioner or the commissioner's spouse discretion whether or not to accept it. (Regulation 18726.1 (b).) Apparently they had no knowledge of nor any reason to know of the conveyance until December 1, 1988, at which point they returned the property. This would constitute a timely return of the gift, because the 30-day period to reject a gift does not commence until the official knows or has reason to know of the gift. (Duffy Advice Letter, No. A-84-084, copy enclosed.)

In the event that the commissioner decides that the conveyance does need to be reported, the information to be reported would be minimal due to the separate property character of the conveyance.

Assuming an interest of \$1,000 or more, the commissioner would have to report the interest on Schedule B of the statement of economic interests even though title was in the spouse's name alone. Schedule B requires the disclosure of all interests in real property in which the official or his or her immediate family had a direct or indirect beneficial interest aggregating \$1,000 or more at any time during the reporting period. (Sections 82033 and 87206.)

No reporting would be required on Schedule D. Schedule D is used to report income other than loans, gifts and honoraria. With respect to spousal income, only the commissioner's community property interest is reportable. (Section 82030.) Absent other factors, property acquired by a married person as a separate property gift is his or her separate property together with the rents, issues, and profits thereof. (California Civil Code Sections 5107 and 5108.) Since the facts indicate that the property was

Luis F. Hernandez

March 30, 1989

Page 6

conveyed to the spouse as "separate property," there should be no income to report.

Finally, if the property was rental property, and the commissioner's pro-rata share of receipts from any one renter was \$10,000 or more, the name of the renter would have to be disclosed on Schedule H-3. (Section 87207(b).) In this case, the commissioner would have no income from any one renter of \$10,000 or more, since all income would be the separate property of the spouse. (Section 82030.)

If you have any questions concerning this letter, please contact me at (916)322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

DMG:MWE:aa

Enclosures

James L. Darrow
City Attorney

FPC

FEB 21 8 45 AM '89



Office of the City Attorney

1243 Main Street
El Centro, CA 92243
(619) 352-7731

Our File No.
20500

February 16, 1989

Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

RE: Request for Informal Assistance

Gentlemen/Ladies:

This Office has been asked to seek informal assistance on behalf of a City Planning Commissioner, and the request is based on the facts that follow:

In April 1988, the parents of a City Planning Commissioner's spouse conveyed, without consideration by Grant Deed, two parcels of income real property located in the City to the Commissioner's spouse as separate property. Neither the Commissioner nor the Commissioner's spouse had knowledge of the conveyance until December 1, 1988. Immediately upon learning of this conveyance, the Commissioner's spouse conveyed, without consideration by Grant Deed, the two parcels of real property back to the parents. Apparently, the parents had intended that the real property in question pass to the Commissioner's spouse only upon the deaths of both parents. Neither the Commissioner nor the Commissioner's spouse received income from either property. In addition, the Commissioner and the Commissioner's spouse did not pay any mortgage, taxes or insurance on the two properties.

The questions presented are: (a) is the Planning Commissioner required to disclose the receipt of the real property on Schedule F of Form 721, Annual Statement, and (b) should the Planning Commissioner report these two transactions on Form 721, Annual Statement, Schedule B, Schedule D and Schedule H-3, if applicable.

Your assistance in this matter will be greatly appreciated.

Fair Political Practices Commission
Page 2 of 2
February 16, 1989

If you need any additional information concerning this matter,
please feel free to call this Office at (619)352-7731 or write
to the above address.

Sincerely,

OFFICE OF THE CITY ATTORNEY

A handwritten signature in cursive script, appearing to read "Luis F. Hernandez". The signature is written in dark ink and is positioned above the typed name.

Luis F. Hernandez
Associate City Attorney

LFH:aof



California Fair Political Practices Commission

February 22, 1989

Luis F. Hernandez
Associate City Attorney
1243 Main Street
El Centro, CA 92243

Re: Letter No. 89-118

Dear Mr. Hernandez:

Your letter requesting advice under the Political Reform Act was received on February 21, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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. Code of Regs. 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,

Diane M. Griffiths
General Counsel

DMG:plh