



California  
Fair Political  
Practices Commission

**SUPERSEDED**  
by A-94-313(Abt)

May 16, 1989

Karen Sonoda  
2491 Sierra Blvd.  
Sacramento, CA 95825

Re: Your Request for Advice  
Our File No. A-89-179

Dear Ms. Sonoda:

This is in reply to your request for advice regarding the annual statement of economic interests which you are required to file pursuant to the provisions of the Political Reform Act (the "Act").<sup>1</sup>

QUESTION

Must you disclose on Form 730, Statement of Economic Interests, the value of travel and per diem you received from The Asia Foundation?

CONCLUSION

If the travel and per diem are gifts for purposes of the Act because you did not provide consideration of equal or greater value to The Asia Foundation, you must disclose those gifts on Schedule F of your Statement of Economic Interests. However, if you provided equal or greater consideration to The Asia Foundation for the travel and per diem you received, you are not required to disclose receipt of the travel and per diem on your statement of economic interests. In that case, the travel and per diem are exempt from disclosure because they are from a bona fide educational organization.

FACTS

During the months of September and October, 1988, you engaged in travel to the Orient in your capacity as director of

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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 Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

international and domestic relations for the California Assembly. Your travel and per diem expenditures were funded and reimbursed by The Asia Foundation. During this trip, your activities primarily consisted of meetings arranged by The Asia Foundation field offices in eight countries in Asia. You made presentations to government officials and college campuses about opportunities for The Asia Foundation-sponsored fellowship training program with the California Assembly and discussed the possibility of legislative exchanges.

You are in the process of filing your 1988-1989 Form 730, Statement of Economic Interests, and you do not intend to include disclosure of this trip. You have asked whether it is necessary to file an amendment to your statement of economic interests disclosing the trip from The Asia Foundation.

#### ANALYSIS

Sections 87300 and 87302 require public agencies to promulgate conflict of interest codes enumerating the positions within the agency subject to disclosure requirements. These codes require public officials to file an annual statement disclosing their investments, interests in real property, income and gifts during the preceding twelve months. As director of international and domestic relations for the California Assembly, you are a public official subject to the disclosure provisions of the Act. (Section 82048.)

Travel and per diem you have received from The Asia Foundation could fall into two categories of economic interests for purposes of the Act: (1) gifts or (2) income.

Section 82028(a) defines "gift" as:

(A)ny payment to the extent that consideration of equal or greater value is not received....

To the extent that gifts are subject to reporting requirements (see Section 87207(a)), public officials receiving travel and per diem must report the travel and per diem as gifts unless they can show that they have provided consideration of equal or greater value to the institution sponsoring their travel. Thus, if you can demonstrate that you have provided the foundation with consideration of equal or greater value than the value of the travel you received, you need not report this travel as a gift.

If you determine that the travel and per diem are gifts, you must report the value of those gifts and the identity of the donor on Schedule F of your statement of economic interests. Section 82028(b) contains several exceptions to the definition of "gift" for purposes of the Act, but none of those exceptions is applicable to your situation.

Income must be reported as specified in Section 87302(b). For purposes of Section 87302(b), "income" includes all payments received. (Section 82030(a).) However, "income" does not include, inter alia:

(2) ... reimbursement for travel expenses and per diem received from a bona fide educational, academic, or charitable organization.

Section 82030(b)(2).

Thus, if the travel and per diem from The Asia Foundation would be considered "income," it is necessary to determine whether The Asia Foundation is a bona fide educational, academic or charitable organization.

The Commission has not promulgated regulations to clarify what constitutes a bona fide educational, academic, or charitable organization. We turn now to other authorities for guidance concerning what constitutes a "bona fide educational, academic, or charitable organization" for purposes of the Act.

The Internal Revenue Code allows individual deductions for charitable contributions. (26 U.S.C.A. 170(a)(1).) Charitable contributions are defined as contributions or gifts to, or for the use of:

(2) A corporation, trust, or community chest, fund, or foundation:

(B) organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition... or for the prevention of cruelty to children or animals.

26 U.S.C.A. 170(c)(2)(B).

Moreover, the Internal Revenue Code exempts from taxation:

(3) Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence

legislation ..., and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

26 U.S.C.A Section 501(c)(3).

A corporation which is organized and operated exclusively for educational, academic, or charitable purposes, and which is exempt from taxation under the provisions of Section 501(c)(3) of the Internal Revenue Code qualifies for this limited exception to the reporting and disclosure requirements of the Act. However, not all 501(c)(3) corporations are "charitable, academic or educational," since that section also covers corporations that test for public safety, foster amateur sports competitions, and engage in various other activities.

We now examine whether The Asia Foundation is a bona fide academic, educational or charitable organization for purposes of the Act. You state in your letter that this organization is a publicly-supported, tax-exempt, not-for-profit organization as defined in Sections 170 and 501(c)(3) of the Internal Revenue Code. The organization was founded in 1951 to lend American assistance to Asians for the growth and development of their societies, to promote Asian regional cooperation, and to further Asian-American understanding, cooperation and friendship. The foundation manages exchange programs for Asians coming to the United States and provides educational and placement services to a number of governmental and private agencies and corporations. It is one of four members of Partners for International Education and Training, a joint venture responsible for placing and monitoring Agency for International Development participants in a broad range of United States academic and training programs. You are not a member of the board of The Asia Foundation and are not a volunteer or otherwise engaged in activities with the foundation.

As described in your letter, The Asia Foundation has academic or educational functions and does not otherwise seem to fit into the 501(c)(3) categories. Therefore, we conclude that it is an educational organization for purposes of Section 82030(b)(2).

Because The Asia Foundation qualifies as an educational institution enjoying tax exempt status under Internal Revenue Code Section 501(c)(3), the travel and per diem which you received from the foundation is not income and need not be reported in your statement of economic interests to the extent that you have provided The Asia Foundation with adequate consideration.

File No. A-89-179  
Page 5

Should you have any questions regarding the above, I may be reached at (916) 322-5901.

Sincerely,

Kathryn E. Donovan  
General Counsel

  
By: Blanca M. Breeze  
Counsel, Legal Division

KED:BMB:plh

March 22 1989

22 March 1989

Diane M. Griffiths  
General Counsel  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

Dear Ms. Griffiths:

I have a question regarding my Annual Statement of Economic Interests which, after over a week of phone calls with FPPC staff, has not been sufficiently clarified.

Specifically, I am requesting a definition of a "bona fide educational, academic or charitable organization," as described under "Information for SCHEDULE D," in order to determine whether The Asia Foundation can be so identified. Your staff indicates that the entity itself must make that determination. I have contacted The Asia Foundation and read the criteria to them; they believe they meet the definition and cite the following from their documentation:

"The Asia Foundation is a publicly supported, tax-exempt, not-for-profit organization as defined in Section 170 and 501(c)(3) of the Internal Revenue Code.

The Asia Foundation is a "private, publicly-supported grant-making organization founded in 1951 to lend American assistance to Asians for the growth and development of their societies, to promote Asian regional cooperation, and to further Asian-American understanding, cooperation, and friendship.

"The Foundation receives...major financial support in the form of an annual Congressionally approved grant through the U.S. Department of State.

"The Foundation...manages academic exchange programs for Asians coming to the United States....

"The Foundation also provides educational and placement services to a number of governmental and private agencies and corporations. It is one of four members of Partners for International Education and Training, a joint venture responsible for placing and monitoring Agency for International Development

participants in a broad range of U.S. academic and training programs.

Based on the above, I am filing my 1988-89 Form 730 Statement of Economic Interest without including under SCHEDULE D, reference to travel I completed in September-October 1988 as part of my job as Director of International and Domestic Relations for the Assembly. Travel and per diem for the trip were funded and reimbursed by The Asia Foundation, and my activities primarily consisted of meetings arranged by The Asia Foundation field offices in eight countries in Asia. For example, I made presentations to government officials and college campuses about opportunities for The Asia Foundation-sponsored Fellowship training program with the California Assembly. I also discussed the possibility of legislative exchanges with the Assembly.

Please apprise me in writing whether or not I need to amend my Statement to include the above-described item; should you require further information, please indicate that in writing as well.

Thank you for your assistance.

Sincerely,

A handwritten signature in cursive script that reads "Karen Sonoda".

Karen Sonoda  
2491 Sierra Blvd.  
Sacramento, CA 95825

FPPC

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Sacramento, CA 95825



# California Fair Political Practices Commission

March 29, 1989

Karen Sonoda  
2491 Sierra Blvd.  
Sacramento, CA 95825

Re: Letter No. 89-179

Dear Ms. Sonoda:

Your letter requesting advice under the Political Reform Act was received on March 24, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Blanca Breeze 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,

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

Diane M. Griffiths  
General Counsel

DMG:plh