



California Fair Political Practices Commission

July 19, 1989

Rosemary Thomas
Personnel Analyst
Health and Welfare Agency Data Center
1651 Alhambra Boulevard
Sacramento, CA 95816

Re: Your Request for Informal Assistance
Our File No. I-89-361

Dear Ms. Thomas:

This is in response to your request for advice concerning the responsibilities of employees of your agency under the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Since you have not requested advice on behalf of a particular employee, we consider your letter to be a request for informal assistance pursuant to Regulation 18329 (copy enclosed.)²

QUESTIONS

1. May an employee of your state agency accept a raffle prize from a computer vendor? The prize in question is a computer valued at \$1,700.

2. If the prize is accepted, must the employee abstain from participating in decisions concerning the computer vendor which sponsored the raffle?

3. May the employee participate in decisions concerning the vendor if he or she accepts the prize and donates it to the state agency?

¹ Government Code Sections 81000-90015. 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. (Section 83114; Regulation 18329(c)(3).)

CONCLUSIONS

1. An employee of your agency may accept a raffle prize from a computer vendor.

2 and 3. If the employee accepts the prize, he or she must abstain from participating in decisions concerning the vendor which sponsored the raffle. However, if the employee donates the unused prize to the state agency within 30 days after receipt, and claims no tax deduction for the donation, he or she has not received a gift and may participate in decisions affecting the vendor which sponsored the raffle.

FACTS

You are a personnel analyst for the Health and Welfare Agency Data Center. In your professional capacity, you provide advice to employees of the agency. An employee of your agency, while on state business, attended a conference and participated in a random drawing sponsored by IBM, a state computer vendor. The employee won a prize valued at \$1,700 and wants to accept the prize and donate it to the agency. The employee has not yet accepted the prize.

ANALYSIS

With certain exceptions not applicable to your facts, the Political Reform Act does not prohibit a public employee from accepting a prize won at a raffle.³ However, public officials who are listed in Section 87200 or who are designated in a state agency's conflict of interest code must file yearly statements of economic interests. (Sections 87200-87313.) If a public official is listed in Section 87200, or if required by his or her agency's conflict of interest code, the official must disclose income and gifts on his or her statement of economic interests.

A prize or an award generally must be disclosed as a gift. Gifts of \$50 or more must be reported on the official's statement of economic interests. (Sections 87207(a)(1) and 87302(b).) If the prize or award is received on the basis of a bona fide competition not related to the filer's official status, it may be reported as income instead of as a gift. (Regulation 18728(d), copy enclosed.) Income of \$250 or more from any source must be reported. (Sections 87207(a)(1) and 87302(b).)

You have stated in a telephone conversation that participation in the raffle was open to all those who attended the conference. This group included members of the private and public

³ Section 86203 prohibits certain state agency officials from accepting gifts in excess of \$10 per calendar month from any lobbyist or lobbying firm registered to influence the quasi-legislative actions of the official's agency.

sectors. The prize was thus received on the basis of a bona fide competition not related to the employee's official status and may be disclosed as either a gift or income in the employee's statement of economic interests.

Additionally, the Political Reform Act prohibits public officials from making, participating in making, or using their official positions to influence the making of any decision in which they have a financial interest. (Section 87100.) An employee of a state agency is a public official if he or she has any decision-making authority. (Sections 82019 and 82048.)

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect upon the public generally on, among others, any person who has been a source of income or gifts to the official of \$250 or more in the 12 months preceding the decision.⁴ (Section 87103(c) and (e).)

You stated in your request for advice that the employee intends to accept the prize and donate it to your agency. If the employee donates the gift, unused, to your agency within 30 days of receipt and does not claim any deduction for tax purposes, the gift has no value to the official and need not be disclosed. (Regulation 18726.1(b)(3), copy enclosed.) Moreover, if donation of the gift to your agency occurs within 30 days of receipt and prior to the date on which the official makes, participates in making or uses his or her official position to influence a governmental decision, the official is relieved from an otherwise disqualifying financial interest based upon the receipt of a gift valued at \$250 or more. (Regulation 18726.1(c)(1).) Under this set of facts, the official may then participate in governmental decisions affecting IBM.

Conversely, if the official retains the gift, disqualification may be required. For disqualification to be required, the effect of the decision on IBM must be reasonably foreseeable, material, and distinguishable from the effect on the public generally. The employee must determine if disqualification is required on a decision-by-decision basis. Enclosed is an advice letter which provides guidance concerning disqualification. (Kolodney Advice Letter, No. A-87-182, copy enclosed.) Please contact me at

⁴ "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and any other organization or group of persons acting in concert. (Section 82047.)

(916) 322-5901 if you have specific questions concerning a particular decision.

In addition, please be advised that our assistance is limited to the provisions of the Political Reform Act. The Act does not prevent a state employee from accepting a raffle prize while attending a conference on state business. We do not know whether other state laws or policies would limit the employee's ability to accept the prize,⁵ and we refer you to the Attorney General's office for guidance on this point.

Sincerely,

Kathryn E. Donovan
General Counsel


By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosures

⁵ For example, state policy requires state employees to give to the state any "frequent flyer" discounts resulting from airline travel at state expense. (See attached memorandum from the Department of General Services and State Administrative Manual Section 0741.)

MemorandumF P P C
APR 12 3 03 PM '89

Date : March 29, 1989

File No. :

To : ALL AGENCY SECRETARIES
ALL DEPARTMENT, BOARD, AND COMMISSION HEADS
ALL ACCOUNTING OFFICERS
ALL BUSINESS SERVICES OFFICERS
ALL FISCAL OFFICERS
ALL TRAVEL COORDINATORSSubject : EXECUTIVE FREQUENT
FLYER PROGRAMS

From : Department of General Services

An ongoing concern is the personal use of "frequent flyer" bonus points by state employees who have accumulated these points as a result of their travel on state business. Under the current 1988/89 airline contract, vendors shall not issue the "frequent flyer" bonus points for tickets purchased on the Y-Cal fare.

Unfortunately, not all of the airlines are adhering to this provision.

State employees are to be reminded that they are not to participate in the Frequent Flyer Programs. In the event that bonus points or premiums are received as a result of travel on state business, they become the property of the State and must be surrendered to the employees' accounting office as provided for in State Administrative Manual Section 0741.

If you need further information regarding the airline contract, you may contact Anna Pahl, Travel Programs Coordinator, Office of Fleet Administration, at (916) 322-0254 or 492-0254.



W. J. ANTHONY, Director
Department of General Services

WJA:AP:kn/AD10:0648T

STATE ADMINISTRATIVE MANUAL

TRAVEL

(Continued)

COMMERCIAL AIR TRAVEL (Revised 11/86)

0741

purchased sufficiently in advance of departure; these discounts should be taken advantage of whenever possible.

The State has contracted with Pacific Southwest Airlines (PSA), American Airlines, American Eagle, and Northwest Orient Airlines for discounted air fares.

Each department will refer to the current Department of General Services Management Memo for Discounted Air Fares for Official Business. Management Memo No. 86-9. issued June 27, 1986 and effective July 1, 1986 lists the changes from the 1985-86 contracts.

Employees traveling by other than the least expensive class available will be required to provide a full explanation of the necessity when submitting claims for reimbursement. (See SAM Section 8422.116.)

Premiums such as discounts on future fares, received by employees as a result of travel on State business are the property of the State and must be surrendered to the employee's accounting office.

USE OF DEPARTMENTAL OWNED AND/OR LEASED AIRCRAFT (Revised 4/84)

0743

Use of State owned or leased aircraft shall be restricted to official departmental business. Aircraft shall not be used for executive travel:

- a. if the destination is within two hours driving time; or,
- b. if the destination is served by regular commercial airlines.

Exceptions to this may be determined by the director of the affected department, or his/her authorized designee, if the trip meets the minimum criteria noted in Section 0744. State agencies may adopt more restrictive aircraft passenger policies than those set forth in Section 0744.

Consistent interpretation and application of the transportation selection criteria contained in Section 0744 by departments is the responsibility of Agency Secretaries for their respective departments.

When operationally feasible, department aircraft may be used on a charter basis by other State agencies or other governmental agencies. When such agencies rent a department-owned aircraft, that agency's policy regarding passengers shall apply.

All use of aircraft by other agencies shall be billed by the department at full cost, including the expense of any pilot services provided.

EXECUTIVE TRANSPORTATION SELECTION CRITERIA, AUTHORIZATION, AND ACCOUNTABILITY (Revised 4/85)

0744

1. Transportation Selection Criteria

- a. Pursuant to the intent of Section 0700, the most economical method of transportation shall be selected in terms of direct expense to the State and the employee's time away from the office. Departmental aircraft may be used whenever it is clearly in the best interest of the State to do so. Considerations for making such a decision will include the following:

- 1) The cost of personnel hours lost in travel;
- 2) Total commercial travel costs (airlines, rental car, taxi, etc.);
- 3) Additional per diem costs;
- 4) Accessibility and/or the urgency of the situation dictating the need for an aircraft;
- 5) Scheduling demands and limitations;
- 6) Driving time to destination would exceed two hours one way; and,
- 7) Commercial airline service and schedules between points of origin and destination including any intermediate stops or layovers.

(Continued)

A:S7/606/14 TL 320

0741 (Cont. 1)

NOVEMBER 1986



MEMORANDUM

To : Coleen McGee
Political Reform Consultant
California Fair Political
Practices Commission
428 J Street
Sacramento, CA 95814

From : HEALTH AND WELFARE AGENCY DATA CENTER

Subject : THE PRIZE

Date : June 15, 1989
File No. : RT

This is in response to our telephone conversations. I am requesting in writing an answer to the following situation:

A state employee, while on state business (travel and time) participates in a random drawing with the prize provided by a vendor (IBM). The employee is planning on accepting the prize on behalf of the Health and Welfare Agency Data Center (HWDC). Can the employee accept the prize and give it to HWDC? If yes, is the department liable in any way from doing business with IBM?

The value of the prize is \$1,700. Since the value is greater than \$250.00 must the employee be excluded from decisions concerning the organization who sponsored the raffle? If yes, how long?

Also, please reference the answers on the attached memo from the Attorney General's Office. Do you concur? If not, why?

Your expedient reply is appreciated. If you have any questions, please contact me at 739-3398.


ROSEMARY THOMAS
Personnel Analyst

Memorandum

To : Russell Bohart, Director
Health and Welfare Agency Data Center
1651 Alhambra Boulevard
Sacramento, California 95816

Date : June 1, 1989

File No.

Telephone: ATSS (8) 473-8638
(916) 323-8638

From : EILEEN CERANOWSKI
Deputy Attorney General
Office of the Attorney General - Sacramento

Subject: THE PRIZE

I thought you might be interested in the reasoning behind the advice you received from Tom Warriner with which I agreed (although I unfortunately was not as quick as he was).

You had asked the question regarding the following situation:

A state employee, while on state business (travel and time) participates in a random drawing with the prize provided by a vendor. The value of the prize is \$1,700.

1. The answer should be found in part in your conflict of interest policy.

(H&WA DC does have a conflict of interest policy and designated employees should be reporting on Form 730's --- Gerri Magers is probably the filing officer)

2. If the employee is one who must report, the prize is definitely reportable based upon its value. The randomness is not the criteria. See Government Code sections 87103 defining financial interest; and Government Code section 87302. Once it is reportable, the employee may not participate in any decision involving the vendor for a period of one year. GC 87300 requires every agency to adopt and promulgate a Conflict of Interest Code. The Code must enumerate the positions which are involved in the making or participation in making decisions which may foreseeably have a material effect on any financial interest ...

A gift, received directly or indirectly, with a value over \$250 becomes a financial interest as provided in GC 87103.

The import of this is that under GC 87302, the employee must report it, and then cannot participate in any decisions regarding that vendor.

Russell Bohart
June 1, 1989
Page Two

3. Acceptance of the gift is not prohibited by Government Code section 19990. That section provides:

"A state officer or employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his or her duties as state officers or employees. Activities and enterprises deemed to fall in these categories shall include, but not be limited to, all of the following:

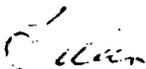
"(f) Receiving or accepting, directly or indirectly, any service, gratuity, favor, entertainment, hospitality, loan, or any other thing of value from anyone who is doing or is seeking to do business of any kind with the officer's or employee's appointing authority or whose activities are regulated or controlled by the appointing authority under circumstances from which it reasonably could be substantiated that the gift was intended to influence the officer or employee in his or her official duties or was intended as a reward for any official actions performed by the officer or employee."

Could it reasonably be substantiated that vendor was intending to influence the employee? Given the random nature of the drawing, probably not. However, a much closer question would arise if the drawing were limited to government employees using the vendor's products.

CONCLUSION:

The gift, although indirectly received, is reportable under the Conflict of Interest Code. The employee would therefore have a financial interest in the vendor who provided the gift and would have to refrain from making any decisions regarding that vendor for a one year period.

JOHN K. VAN DE KAMP
Attorney General



EILEEN CERANOWSKI
Deputy Attorney General

EC:jh

Encls. - Copies of Code Sections

cc: Thomas Warriner
Health & Welfare Agency



California Fair Political Practices Commission

June 19, 1989

Rosemary Thomas
Health & Welfare Agency Data Center
1651 Alhambra Boulevard
Sacramento, CA 95816

Re: Letter No. 89-361

Dear Ms. Thomas:

Your letter requesting advice under the Political Reform Act was received on June 15, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan Ahuja 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, appearing to read "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh



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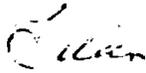
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