



California Fair Political Practices Commission

October 4, 1989

Carolyn Peirce Ewing
Deputy Director
Administration and Transportation Programs
Business, Transportation and Housing Agency
1120 N Street
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-89-480

Dear Ms. Ewing:

This is in response to your request for advice regarding the responsibilities of members of the Los Angeles-Fresno-Bay Area/Sacramento High-Speed Rail Corridor Study Group under the provisions of the Political Reform Act (the "Act").¹ Since your request does not involve a specific pending decision, we are treating your request as one for informal assistance pursuant to Regulation 18329(c)(1) (copy enclosed).²

QUESTIONS

1. May members of the high-speed rail corridor study group accept gifts of accommodations, travel and subsistence from foreign governments and businesses?
2. If gifts of accommodations, travel and subsistence are accepted, how are these gifts reported?
3. Does acceptance of gifts of travel and subsistence from foreign governments and businesses create a conflict of interest under the Act?

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. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

1. The Act does not prohibit acceptance of gifts of accommodations, travel and subsistence from foreign governments and businesses. However, you should seek further guidance regarding whether acceptance of such gifts is prohibited under other provisions of law.

2. A conflict of interest code should be adopted for the high-speed rail corridor study group. The disclosure responsibilities of members of the study group with respect to gifts received from foreign governments and businesses must be provided for in the code. The code must enumerate the positions within the agency which involve participation in the making of decisions which may materially affect the officials' economic interests, and must require disclosure of those interests.

3. Acceptance of gifts from foreign governments and businesses may create a conflict of interest under the Act.

FACTS

A.B. 971 (Stats. 1988, ch. 971) created the Los Angeles-Fresno-Bay Area/Sacramento High-Speed Rail Corridor Study Group. You chair this group as the appointed designee of the director of transportation. The remaining voting members of the group consist primarily of local elected officials representing various cities and counties. Additionally, two representatives are appointed by the Metropolitan Transportation Commission, one representative is appointed by the Los Angeles County Transportation Commission, and one representative is appointed by the Southern California Association of Governments. The remaining members are appointees of the California Transportation Commission, the National Railroad Passenger Corporation, the Southern Pacific Transportation Company and the Atchinson, Topeka and Santa Fe railway companies or their successor corporations, and the Secretary-Treasurer of the California Labor Federation. A consumer representative is jointly appointed by the Chairperson of the Assembly Committee on Transportation, the Chairperson of the Senate Committee on Transportation, and the Public Utilities Commission. (A.B. 971, supra, Section 2(a) and (b).)

The study group is charged with the development of a program of incremental development of the high-speed rail corridor. It must also establish an implementation and funding plan which must take into consideration the possibility of a state bond issue to finance development of the high-speed corridor. The group must prepare and submit to the Legislature a preliminary report of its findings and recommendations on or before January 1, 1990, and a final report on or before July 1, 1990. (AB 971, supra, Section 2(d)-(f).)

Members of the study group plan to travel to Europe in late September, 1989, to learn first hand about high speed and ultra high speed rail-related transportation technology in Spain,

France, and Germany. They will not conduct seminars or make any speeches while pursuing their studies in Europe.

The members of the study group or their appointive agencies will cover the cost of round-trip transportation to the three countries they will visit. However, upon arrival at each country, they will be guests of government and private industry in each country and it is expected that they will receive free train rides and some free accommodations and meals.

ANALYSIS

The Act does not prohibit the acceptance of gifts from any particular source, but imposes disclosure and disqualification obligations on the receipt of gifts. You should seek advice on whether other provisions of law prohibit acceptance of such gifts.

The extent of disclosure is determined by an agency's conflict of interest code. The Act requires every state or local agency to adopt and promulgate a conflict of interest code. (Section 87300.) Section 87302 provides that conflict of interest codes shall enumerate the designated employees within the agency who make or participate in making decisions which may foreseeably have a material financial effect on any financial interest of the designated employee. Section 82019 defines a designated employee as any officer, employee, member or consultant of any agency who possesses decisionmaking authority. The term "designated employee" does not include any unsalaried member of a board or commission which performs a solely advisory function.

A board possesses decisionmaking authority if:

(A) It may make a final governmental decision;

(B) It may compel a governmental decision; or it may prevent a governmental decision by reason of an exclusive power to initiate the decision or by reason of a veto which may not be overridden; or

(C) It makes substantive recommendations which are, and over an extended period of time have been, regularly approved without significant amendment or modification by another public official or governmental agency.

Regulation 18700(a)(1), copy enclosed.

Commission Regulation 18700(b) provides in part that a designated employee makes a governmental decision when he or she is acting within the authority of his or her office, and:

(1) Votes on a matter;

(2) Appoints a person;

(3) Obligates or commits his or her agency to any course of action;

(4) Enters into any contractual agreement on behalf of his or her agency; or

(5) Determines not to act, within the meaning of sub-paragraphs (1), (2), (3), or (4).

The High-Speed Rail Corridor Study Group will prepare a program of incremental development of the high-speed rail corridor. It will establish an implementation and funding plan and report its findings and recommendations to the Legislature. Any decision to act on the recommendations must be initiated by the Legislature. The Legislature may follow or reject the recommendations. Since the study group is newly created, there is presently no history on which to determine the extent to which the study group's recommendations will be followed. Thus, when presenting its findings and recommendations to the Legislature, the study group is not participating in the making of a governmental decision and is acting in a solely advisory capacity. (Regulation 18700(a)(1), Amen Advice Letter, No. A-88-304, copy enclosed.)

However, the board also has authority to hire outside consultants to conduct certain studies. (A. B. 971, supra, Sec. 2(e).) In this capacity, the board is empowered to make governmental decisions. (Regulation 18700(b)(4).) Furthermore, there may be other issues on which members of the study group possess final decisionmaking authority.

Accordingly, the Los Angeles-Fresno-Bay Area/Sacramento High-Speed Rail Corridor Study Group should adopt a conflict of interest code and persons enumerated in the code must file statements of economic interest once a code is adopted. The code will determine the disclosure and filing responsibilities of members of the group. Jeanette Turvill, a member of our staff, will contact you to provide assistance in the formulation of a conflict of interest code for your study group.

Meanwhile, we are providing you with a general discussion of the reporting and disqualification requirements under the Act. As a general rule, public officials must report third-party payments for travel, meals and accommodations. Payments for travel, meals and accommodations not in conjunction with a speech or similar activity must be reported either as income or gifts, depending upon whether or not full and adequate consideration was given by the elected officer. Payments of income aggregating \$250 or more from a single source must be reported. Payments which are gifts must be reported when the aggregate value from a single source is \$50 or more. (Section 87207; Regulation 18728, copy enclosed.) Because members of the group will neither conduct seminars or give speeches nor will they provide consideration for any accommodations, travel or meals they may receive, the payments must be reported as gifts.

The Act defines "gift" as any payment to the extent that consideration of equal or greater value is not received. The term "gift" does not include:

- (1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expense shall be deemed "informational material."

Section 82028(b)(1)

Clearly books and other literature are excluded from the definition of gift. Moreover, the statute provides that no payment for travel or reimbursement for any expenses shall be deemed "informational material." (Section 82028(b)(1).)

Within very narrow parameters, however, "informational material" may include both tangible and intangible materials. For example, a private guided tour of a nuclear power plant which is unavailable to the public constitutes informational material and therefore the value of the tour is not a gift to the official. (In re Spellman (1975) 1 FPPC Ops. 16, copy enclosed.) Similarly, where the Nature Conservancy provides a public official with a tour of Santa Cruz Island, the cost of the tour is not a reportable gift but rather constitutes intangible informational material excluded from the definition of gift under Section 82028(b)(1). Transportation to and from the island also constitutes educational material because the preserve is only accessible by the conservancy's airplane or boat. Within this context, transportation to and from the island is part and parcel of the tour and is not a reportable gift because it is intangible informational material. (Duffy Advice Letter, No. A-84-084, Leidigh Advice Letter, No. A-89-248, copies enclosed.)

Applying the above guidelines to your facts, we conclude that free travel in high speed trains in Europe constitutes intangible educational material since it is the purpose of the study group to experience the operation of such a system. Similarly, meals and accommodations on board such trains, when part and parcel of the train ride and unavailable otherwise, are excluded from the definition of gift and are intangible educational material. Thus, the value of these train rides and related meals and accommodations on board the high speed trains need not be reported.

Moreover, there are situations where the surrounding circumstances show that the gift was made to the public agency without providing any significant or unusual benefit to the official. In such a case, the official would have no reporting obligations since whatever he receives, although free of charge to him and to the public agency, would be analogous to reimbursement for expenses or per diem from a state or local government agency, items which are not reportable. (Section 82030(b)(2); In re Stone (1977) 3 FPPC Ops. 52, 56, copy enclosed.) The Commission has determined that while no immutable guidelines can be cast for determining when a gift is intended for the use of the public

agency only, and not the official, it should satisfy at least the following four criteria:

1. The donor intended to donate the gift to the public agency and not to the official;
2. The public agency exercises substantial control over use of the gift;
3. The donor has not limited use of the gift to specified or high level employees, but rather has made it generally available to public agency personnel in connection with public agency business without regard to official status; and
4. The making and use of the gift was formalized in a written public record which embodies the standards set forth above. (Stone, supra.)

On the other hand, any other free meals, travel or accommodations received while in Europe are gifts pursuant to Section 82028. (See also Regulation 18228; Stirling Advice Letter, No. A-85-045; copies enclosed.) These gifts must be disclosed on Schedule G, Form 721, of the officials' annual statement of economic interests to the extent provided for in the study group's conflict of interest code. The gifts also may give rise to disqualification obligations.

The Act prohibits a public official from participating in a decision in which the official has a financial interest. (Section 87100.) An official has a financial interest in a decision if it will have a reasonably foreseeable material financial effect on a source of gifts aggregating \$250 or more in the 12 months prior to the decision. (Section 87103.) Thus, members of the study group who receive gifts of \$250 or more may have to disqualify from participating in decisions affecting the source of such gifts. If a specific decision arises, do not hesitate to contact us for further advice.

We trust this letter adequately responds to your inquiry. Should you have any further questions regarding this matter, do not hesitate to call me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Blanca M. Breeze
Counsel, Legal Division

KED:BMB:plh

Enclosures

M e m o r a n d u m

FPPC

Aug 11 10 01 AM '89

To : Mr. John Wallace
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Date : August 9, 1989

File No. :

From : **DEPARTMENT OF TRANSPORTATION**
DIRECTOR'S OFFICE

Subject : AB 971 Study Group Conflict of Interest Issue

This is to request a written response from the Fair Political Practices Commission on a conflict of interest issue.

Members of the AB 971 Study Group, most of whom are local-elected officials in the San Joaquin Valley, plan to travel to Europe at the end of September 1989, in order to learn firsthand about high speed and ultra high speed trains in Spain, France, and Germany. Although these officials intend to pay their own transportation and other costs, these same people will be guests of government and private industry once abroad. In other words, train trips, receptions, and some meals will be made available to them in the three countries identified above. These trips and events are to educate these local officials to the various technologies.

I need a written response from the Fair Political Practices Commission in the next few weeks. If you need to discuss this with me, I may be contacted at (916) 324-6797. Thank you.



CAROLYN PEIRCE EWING
Deputy Director
Administration and Transportation
Programs

State of California

Business, Transportation and Housing Agency

Memorandum

FPPC

To : Mr. John Wallace
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

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Carolyn Peirce Ewing, lw

CAROLYN PEIRCE EWING
Deputy Director
Administration and Transportation
Programs



California Fair Political Practices Commission

August 21, 1989

Carolyn Peirce Ewing
Deputy Director
Department of Transportation
1120 N Street
Sacramento, CA 95814

Re: Letter No. 89-480

Dear Ms. Ewing:

Your letter requesting advice under the Political Reform Act was received on August 11, 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 "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh