

April 20, 2007

Roy Parmentier
136 N Starr Street
Lakeport, California 95453-4537

**RE: Your Request for Advice
Our File No. A-07-028**

Dear Mr. Parmentier:

This letter is in response to your request for written advice regarding the conflict-of-interest and gift provisions of the Political Reform Act (the “Act”).¹ Because elements of your conflict of interest question concern past conduct, we are declining to provide advice regarding this issue. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter evaluates any previous conduct and any conclusions contained herein apply only to prospective actions. Our advice is based on the facts you provide. The Fair Political Practices Commission (“Commission”) does not act as a finder of fact when it provides advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Do fishing trips taken on your friend’s fishing boat constitute a reportable gift under the Act where you buy lunches, bait, and pay for half of the gas to take the trip?

CONCLUSIONS

Generally, when an official receives something of value and provides consideration of equal or greater value in exchange, there is no gift under the Act. The lunches, bait, and payments for gas you provided on the day of each fishing trip are consideration provided toward the value of the fishing trip. However, we do not have sufficient information to determine whether the value of this consideration was equal to or greater than the value of the fishing trip. If it was of equal or greater value, there is no gift to you. If it was less than equal value, the difference between the value of the fishing trip and the value of the consideration you provided is a gift to you subject to the \$50 reporting requirement and the \$390 gift limit.

¹ Government Code Sections 81000 – 91014. Commission Regulations appear at Title 2, Sections 18109-18997, of the California Code of Regulations.

FACTS

You are the mayor of the City of Lakeport. Jim Burns has been an acquaintance of yours for over 15 years. You are an avid fisherman and ran into Jim Burns while on a fishing trip in Fort Bragg one to two years ago. Mr. Burns asked if you would like to accompany him on his fishing boat so that you both could fish together. In the past year, you have fished with Mr. Burns a total of six times. On each of these trips you bought bait, lunches, and on one occasion gave Mr. Burns a filet tray for his boat. You also shared expenses for gas. You have also allowed Mr. Burns to use your fishing boat when he was vacationing in McCloud.

In the past year, Mr. Burns has been representing a group of investors who are trying to determine if it would be feasible to build a new golf course and housing development in Lakeport. In our telephone conversation you mentioned that you have already participated in governmental decisions related to this development project.

ANALYSIS

Gifts - Generally

Section 87203 provides that “[e]very person who holds an office specified in Section 87200 shall . . . file a statement disclosing his [or her] investments, his [or her] interests in real property and his [or her] income . . .” Income includes gifts. (Section 82030.) As a city councilmember, you are a person who holds an office specified in Section 87200.

Additionally, Section 89503(a) provides that no elected officer of a local government agency shall accept gifts from any single source in any calendar year worth in excess of the gift limit. The current gift limit is \$390. (Regulation 18940.2.)

Section 87207 provides that gifts of \$50 or more in value must be reported. (Section 87207(a)(1).)

Section 82028(a) defines “gift” as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received . . .”

The Neighborliness Exception

The Commission has previously indicated that certain types of benefits are not gifts, but instead “acts of neighborliness.” (*In re Cory* (1975) 1 FPPC Ops. 153.) In *Cory*, the Commission was asked whether an official had received a gift from a neighbor who had assisted him in repairing his fence. In providing that such services were “acts of neighborliness” instead of reportable gifts, the Commission stated that it was “absurd to suppose that the repairing of a fence by a neighbor, the offering of a ride, the fixing of a flat tire, or hundreds of similarly friendly acts are ‘gifts’ which must be reported under the Act . . .”

The Commission later offered certain factors that “are relevant to determining whether a service provided to a public official is a nonreportable act of neighborliness or a gift. The Commission stated that among the factors to be considered is “whether the donor has, or in the foreseeable future may have business before the official who receives the service.” The Commission stated:

“While the absence of this factor does not necessarily mean that no gift has been made, the presence of this factor will in most cases provide strong, if not conclusive, evidence that a gift has been made. It may be that the donor has no intent of attempting to influence the official, but the need to avoid even the appearance of possible impropriety is reason alone to require that a service provided to an official under these circumstances be disclosed.”
(*In re Stone* (1977) 3 FPPC Ops. 54.)

Because Mr. Burns has been or will be appearing before you, and the fishing trips were taken close to the time he began appearing before you, we do not believe the “acts of neighborliness” exception applies. Accordingly, the fishing trips you took with Mr. Burns constitute “gifts” under the Act to the extent that the benefit you received was greater than what you paid in consideration for each trip.

Return, Donation, or Reimbursement of a Gift

Section 82028 and Regulation 18943 provide for the return, donation, or reimbursement of a gift. Regulation 18943(a)(4) states that a gift is not considered accepted or received if:

“The recipient, within 30 days of receipt or acceptance, reimburses the donor, or the donor's agent or intermediary, for all or a portion of the gift. In such event the value of the gift is reduced by the amount of the reimbursement, and the amount of the any gift or activity expense which must be disclosed is reduced by the amount of the reimbursement.”

Cash Payments: So long as the cash consideration you provided to Mr. Burns for the trips (which he may have used for bait, gas, food, etc.) was paid within 30 days, and assuming the payment was equal to or greater in value than the fishing trip, no gift was received. (Regulation 18943(a)(4).)

Noncash Payments: In addition, non-cash consideration exchanged during the same outing, (and not at some later date) for which the consideration given was of equal or greater value than the benefit received would not result in a gift.

Because you have not provided facts to determine the value of what you received in exchange for the consideration you provided on these fishing trips, we are unable to determine whether or not the consideration you provided is equal to or greater than the value of the benefit received. However, to guide you in making this determination, Regulation 18946(b) provides:

“Whenever the fair market value cannot readily be ascertained because the gift is unique or unusual, the value shall be the cost to the donor, if known or ascertainable. If the cost to the donor is unknown and unascertainable, the recipient shall make a reasonable approximation. In making such an approximation, the recipient shall take into account the price of similar items. If similar items are not available as a guide, a good faith estimate shall be utilized.”

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Scott Hallabrin
General Counsel

By: Sukhi K. Brar
Counsel, Legal Division

SKB:jgl