



## FAIR POLITICAL PRACTICES COMMISSION

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April 21, 2009

Deborah M. Fletcher  
Deputy Attorney General  
110 West A Street, 11<sup>th</sup> Floor  
San Diego, California 92101

Re: Your Request for Advice  
**Our File No. I-09-050**

Dear Ms. Fletcher:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").<sup>1</sup> Because you seek general guidance, we are providing informal assistance, rather than advice. Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

### QUESTIONS

1. Are free admission tickets given to a public official by his or her agency for an event controlled by the agency "gifts" to the public official?
2. If the giving of tickets does not fall within the provisions of Regulation 18944.1, does Regulation 18944.3 operate as an exception to the gift rules?
3. If the tickets are gifts and, instead of receiving the tickets for free the official purchases them at a discount, what is the value of the gift?

### CONCLUSIONS

1. The tickets are gifts to the public official unless, under Regulation 18944.1,

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

the tickets (i) are treated by the official and the agency as taxable income or (ii) are distributed under a written policy adopted by the agency and posted on the agency's website that states, among other things, the public purposes to be accomplished by the policy, as described below.

2. Ticket or passes fall within the provisions of Regulation 18944.1. Regulation 18944.3 is not applicable to tickets received by a public official from the official's agency.

3. Assuming the ticket is a gift under Regulation 18944.1, the value of a ticket purchased at a discounted price is the amount of the discount.

### FACTS

As a deputy attorney general, you provide counsel to District Agricultural Associations (DAA), state agencies that are governed by a nine-member board of directors appointed by the Governor. These DAAs conduct annual fairs. Often these fairs include entertainment, usually in the form of concerts. Although at times the general public may attend these concerts for the price of admission to the fair, often there is an extra charge to attend these concerts. You indicate that the DAAs do not have written policies governing the distribution of these tickets to board members in accordance with the requirements recently adopted in Regulation 18944.1(b)(2)(B).

On occasion, a DAA will provide its directors with tickets to these extra-charge concerts at no charge to the directors. You believe that some DAAs may offer these tickets to directors at a discounted price. You ask whether these tickets constitute "gifts" under the Regulation 18944.1, Gifts: Tickets or Passes to Events.

### ANALYSIS

Question 1. The Act defines a 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 and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status." (Section 82028(a).) Under the Act, gifts to a public official from a third party are generally limited to \$420 per year per donor (Section 89503), and the official must report any gifts received of \$50 from a single source on his or her yearly statement of economic interests.<sup>2</sup>

The rules regarding tickets or passes provided to an official by the official's agency were recently changed with the adoption of new Regulation 18944.1. The general

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<sup>2</sup> This discussion presumes that the officials in question are required to report gifts and are subject to the gift limits under the Act because the officials are in positions listed in the agency's conflict of interest code.

rule, absent the provisions of Regulation 18944.1, is that the tickets or passes are a gift, as defined above, to the official.

First, Regulation 18944.1(b)(1) provides that the ticket or pass is not a gift to the official if the official treats the ticket or pass as income consistent with the applicable state and federal income tax laws and the agency reports the distribution of the ticket or pass as income to the official by posting it on the agency's website within thirty days of the distribution. (Regulation 18944.1(d).)

Second, Regulation 18944.1(b)(2)(B) creates a "safe harbor" for an official who must establish that he or she has provided to the agency "consideration of equal or greater value" in exchange for the tickets or passes. If the requirements of Regulation 18944.1(b)(1)(B) and Regulation 18944.1(c) are met, an official is deemed to have paid consideration of equal or greater value for the tickets or passes. Regulation 18944.1(b)(1)(B) states:

"With respect to a ticket or pass provided by the official's agency to an agency official, which ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the agency controls the event (such as a state or county fair), or (iii) that is purchased by the agency at fair market value, the distribution of the ticket or pass is made in accordance with subdivision (c) below."

Regulation 18944.1(c) states, in pertinent part:

"Any distribution of tickets or passes under subdivision (b)(2) by an agency to, or at the behest of, its officials must be made pursuant to a written policy duly adopted by legislative or governing body of the agency that state the public purposes to be accomplished by the agency policy . . ."

Regulation 18944.1(c) also sets forth provisions that must be in the policy, and Regulation 18944.1(d) imposes duties upon the agency that call for public posting of each distribution of a ticket or pass, including a requirement that the posting describe the public purpose under which the distribution was made.

In summary, under Regulation 18944.1, there are two ways in which an official may receive tickets or passes from the official's agency without the tickets and passes being considered as gifts to the official. Either the official and his or her agency treat the tickets and passes as income as provided by Regulation 18944.1(b)(1), or the official and the agency must follow the procedures described in Regulations 18944.1(c) and 18944.1(d). In either of these instances, since the ticket or pass is in consideration for the official's services to the agency, it would be considered government "salary" (Section

82030(b)(2) and not subject to reporting on the official's Statement of Economic Interests.

Question 2. Tickets or passes fall within the provisions of Regulation 18944.1. Regulation 18944.3 is not applicable to tickets or passes received by a public official.

Question 3. With respect to the valuation of a gift to DAA directors who purchase tickets at a discount, Section 82028 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 and includes a rebate or discount in the price of anything of value* unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.” (Emphasis added.)<sup>3</sup>

Thus, the value of the gift is the amount of the discount.

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

Sincerely,

Scott Hallabrin  
General Counsel

By: Valentina Joyce  
Counsel, Legal Division

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<sup>3</sup> See also *Mattas* Advice Letter, No. A-04-207.