



FAIR POLITICAL PRACTICES COMMISSION

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April 14, 2009

Pamela J. Walls
County Counsel
County of Riverside
3535 Tenth Street, Suite 300
Riverside, CA 92501

**RE: Your Request for Informal Assistance
Our File No. I-09-064**

Dear Ms. Walls:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your request seeks general information, we are providing informal assistance.²

QUESTIONS

1. Does a county department providing complimentary tickets or passes to a county event on county property (such as a county fair) to county employees, officials, charitable organizations, or others need to complete and post the Form 802 (and follow the procedures outlined in Regulation 18944.1) on the county department website pursuant to a county policy?

2. If the county owns a stadium box or suite (not a county event or on county property), pursuant to the terms of an agreement, or purchased by the county at fair market value, does the county department providing tickets or passes to the events need to complete the Form 802 (and follow the procedures outlined in Regulation 18944.1) on its website pursuant to a county policy?

¹ 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.

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), copy enclosed).

in order to have the distribution of these tickets to county officials or employees not subject to disclosure and gift limit requirements?

3. If the department distributes the tickets or passes to a charitable organization or someone other than a public official, would a Form 802 need to be completed?

CONCLUSIONS

1. No. Regulation 18944.1 merely provides an option for agencies and does not require any agency to follow its provisions. However, if the agency does not opt to follow the procedure outlined in Regulation 18944.1, the tickets or passes you describe will be considered either income (if the recipient treats it as income) or a gift under the Act, and therefore subject to the Act's reporting and gift limitation provisions.

2. Yes, if the gifts are of the type that are subject to the Act's reporting and limitation provisions.

3. Regulation 18944.1(b)(2)(B) only applies "to a ticket or pass provided by the official's agency to [or behested by] an agency official." If the ticket or pass is provided to a charitable organization or someone other than a public official "at the behest" of an agency official, Regulation 18944.1(2)(2)(C) would apply and the ticket or pass would be considered a gift (or income) to the behesting public official unless the provisions of the regulation were followed, including the posting of the information on a Form 802.

FACTS

You seek clarification on subdivision (b)(2)(B) of Regulation 18944.1 relative to the above questions.

ANALYSIS

Recently, the Commission adopted amendments to Regulation 18944.1. This regulation addresses possible gifts of tickets or passes made by a public agency. It provides a method whereby the agency may set up, and follow, a procedure under which the tickets or passes will not be considered gifts, either because they are treated as income or because pursuant to the terms of the regulation, the "official will meet the burden under Section 82028 that equal or greater value has been provided in exchange therefore . . ." You have asked about the provisions of Regulation 18944.1 (b)(2)(B), which concerns tickets or passes that an agency obtains pursuant to the terms of a contract, or because it controls the events, or because it purchases the tickets at face value. Regulation 18944.1(b)(2)(B) states:

"(b) Ticket or pass provided to official by official's agency.

{ . . }

“(2) When an agency provides a ticket or pass to a public official that otherwise meets the definition of gift under Section 82028 and is not exempt under applicable Commission regulations, the official will meet the burden under Section 82028 that equal or greater value has been provided in exchange therefor, provided that all of the following requirements are met:

{ . . . }

“(B) 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.”

Nothing in this regulation requires a state or local agency to follow its provisions. It merely provides an optional procedure for a public agency to use as a method for distributing certain types of tickets or passes to events where the tickets or passes will not be considered gifts because adequate consideration is provided. If the procedure is not followed, and the receipt of the ticket or pass is not treated as income, the receipt of the ticket by a public official will be considered a gift subject to the Act’s reporting and limitation provisions.

The procedures to be followed are set forth under subdivisions (c) and (d) are as follows:

“(c) 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. If the agency maintains a website, the written policy shall be posted on the website in a prominent fashion. The written policy shall contain, at a minimum, the following:

“(1) a provision setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes;

“(2) a provision requiring that the distribution of any ticket or pass by the agency to, or at the behest of, an official accomplish a public purpose of the agency; and

“(3) a provision prohibiting the transfer by any official of any ticket or pass, distributed to such official pursuant to the agency policy, to any other person, except to members of the official's immediate family solely for their personal use.

“(d) The distribution of a ticket or pass pursuant to this regulation, including a ticket or pass that is provided to the official under subdivision (b)(1) above, shall be posted, on a form provided by the Commission, in a prominent fashion on the agency's website, within 30 days after the distribution. If the agency does not maintain a website, the form shall be maintained as a public record, be subject to

inspection and copying under Section 81008(a), and be forwarded to the Commission for posting on its website. The posting shall include the following:

“(1) the name of the person receiving the ticket or pass, except that if the ticket or pass is distributed to an organization outside the agency, the agency may post the name, address, description of the organization, and the number of tickets or passes provided to the organization in lieu of posting the names of each individual from the organization;

“(2) a description of the event;

“(3) the date of the event;

“(4) the face value of the ticket or pass;

“(5) the number of tickets or passes provided to each person;

“(6) if the ticket or pass is behested, the name of the official who behested the ticket or pass; and

“(7) a description of the public purpose under which the distribution was made or, alternatively, that the ticket or pass was distributed as income to the official.”

Finally you have asked about ticket distribution by an agency when the tickets are distributed to charitable organizations or persons who are not public officials. The Act only regulates gifts made to, or behested by, a public official. If the ticket or passes are given to charitable organizations or anyone who is not a public official, and the distribution of the ticket or pass was not made at the behest of a public official, it is not a gift that is subject to the provisions of the Act.

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

Sincerely,

Scott Hallabrin
General Counsel

By: William J. Lenkeit
Senior Counsel, Legal Division

WJL:jgl

Enclosure