

October 14, 2013

Timothy J. Fennell
CEO-General Manager
Del Mar Fairgrounds-Racetrack
2260 Jimmy Durante Blvd.
Del Mar CA 92104-2216

Re: Your Request for Advice
Our File No. A-13-127

Dear Mr. Fennell:

This letter responds to your request for advice regarding the gift and financial disclosure provisions of the Political Reform Act (the "Act").¹ Please note that the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) In addition, our advice is based solely on the provisions of the Act.

QUESTION

Does the Act impose any restrictions or requirements on you if you accept a payment for transportation, food and lodging from Luden Entertainment, an entity that is the Mexican equivalent of an American entity organized under Section 501(c)(3) of the Internal Revenue Code, in connection with making a speech at the Mexican Fairs and Festival conference in Leon, Mexico, to be held in January 2014, to speak about the organization and operations of the San Diego Fair?

CONCLUSION

As discussed below, based on the scope of your financial disclosure as set forth in your agency's conflict of interest code, the Act's gift limits would not appear to apply to this travel and you would not have to report the costs of this travel on your Statement of Economic Interests

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.

(FPPC Form 700). However, payment for the travel could present a conflict of interest for you under the Act if, within 12 months after receiving the payment, you make, participate in making or use your official position to influence a government decision that has a reasonably foreseeable material financial effect on Luden Entertainment.

FACTS

You are the Secretary/Treasurer of the Board of Directors of the 22nd District Agricultural Association (the “Association”), a state agency, and also the CEO-General Manager of the San Diego County Fair, which is operated by the Association. You are a designated employee of the Association and thus required to report your economic interests on FPPC Form 700 as set forth in the conflict of interest code applicable to designated employees of the Association.

The Association is under the conflict of interest code of the State Department of Food and Agriculture. As is pertinent to your question, that code requires you to report “Each source of income, provided the income was furnished by or on behalf of any person contracting with, furnishing or offering to provide real or personal property or services to the Association as stated in paragraphs (a) or (b) above, including concessionaires.” Paragraph (a) of this provision applies to for-profit entities that, during the reporting period, were awarded or bid upon a contract of the Association for, or supplied to it under contract, materials, goods, supplies, or services. Paragraph (b) of this provision applies to interests in real property that, during the reporting period, were acquired by, leased, or otherwise used by the Association for any consideration.

The San Diego County Fair is the largest fair in California and the fourth largest in North America. You have been invited by Luden Entertainment, a non-governmental, nonprofit entity based in Mexico that is the Mexican equivalent of an American entity organized under Section 501(c)(3) of the Internal Revenue Code, to be a guest speaker at a Mexican Fairs and Festival conference in Leon, Mexico to be held in January 2014. You would speak at the conference about the organization and operations of the San Diego Fair. Luden Entertainment has offered to pay for all of your travel expenses in connection with this speech. You believe this visit will be not only beneficial to the San Diego County Fair but will also help expand relations with the fair industry of Mexico.

ANALYSIS

Subject to certain exceptions (see Section 82028(b) and Regulations 18942, 18944 and 18950 – 18950.4) the term “gift” is defined in Section 82028(a) as:

“Any payment² 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

² Section 82044 defines “payment,” in part, as any “rendering of ... services or anything else of value, whether tangible or intangible.”

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.”³

In an effort to reduce improper influences on public officials,⁴ the Act regulates the receipt of gifts by state agency public officials in the following ways:

- The Act imposes reporting obligations on certain public officials requiring that any gifts aggregating to \$50 or more from the same source received during the calendar year be disclosed on the officials’ Statements of Economic Interests (FPPC Form 700) so that the public is made aware of any potential influences from gifts. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency’s conflict-of-interest code (known as “designated employees”) (Section 87302(b)).⁵
- The Act places limitations on the acceptance by certain public officials of gifts from non-lobbyists. The current limit is \$440⁶ from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and, as relevant here, any employee designated in his or her agency’s conflict-of-interest code if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)
- The Act places limitations on gifts to certain state public officials that are made or arranged by a state lobbyist or lobbying firm. The limit is \$10 per calendar month. (See Sections 86201, 86203 and 86204.)
- The Act prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date of

³ Generally, gifts are valued at fair market value (Regulation 18946).

⁴ A “public official” is “every member, officer, employee, or consultant of a state or local governmental agency.” (Section 82048.)

⁵ Section 82019 generally defines “designated employee” as any officer, employee, member or consultant of any agency whose position is designated in the agency’s conflict of interest code because the position entails the making or participation in the making of government decisions that may foreseeably have a material effect on any financial interest.

⁶ The non-lobbyist gift limit is adjusted on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index. (Section 89503(f).)

the official's participation in the decision. (Sections 87100 and 87103(e); Regulations 18700 and 18703.4.)

The issue presented by your question is whether any of these provisions apply to you if you accept a payment for the costs of transportation, meals or lodging from a Mexican equivalent of an American 501(c)(3) organization in connection with making a speech about the organization and operations of the San Diego Fair at a Mexican Fairs and Festival conference in Leon, Mexico to be held in January 2014.

As described above, unless an exception applies, Section 82028(a) defines the term "gift" to be any payment that confers a personal benefit and for which equal or greater consideration is not provided in return. Under the Act, each agency is required to adopt a conflict of interest code in which it requires agency "designated employees" to report on their Statements of Economic Interests gifts totaling \$50 or more in the reporting period from sources that are foreseeably financially affected by the agency decisions in which the official participates. (Section 87302(b).) The Act also prohibits an official from accepting gifts in excess of the current gift limit of \$440 per calendar year from any person whose gifts the official is required to report on his or her Statements of Economic Interests. (Section 89503; Regulation 18940.2.)

Because of the positions you hold with the Association and the Association-operated San Diego County Fair, you are a "designated employee" of the Association (Section 82019) and file a Statement of Economic Interests pursuant to the provisions of the conflict of interest code applicable to officers and employees of the Association (Section 87302). The conflict of interest code of the State Department of Food and Agriculture applies to the Association's officers and employees. As is pertinent to your question, that code essentially requires you to report "income" from any for-profit entity that contracts or has bid on a contract with the Association, and from any person who has bought or leased real property from the Association or otherwise used Association real property for consideration, during the reporting period. For purposes of the Act's financial disclosure provisions, the term "income" includes gifts. (See Sections 82030(a) and 87302(b), cross-referencing Section 87207.) Therefore, if a person who provides you with a gift does not contract with or has not bid upon a contract with the Association, or has not bought, leased, or otherwise paid the Association to use real property, during the reporting period, you are neither required to report a gift from that source, nor are you subject to the Act's \$440 gift limit if you receive a gift from that source.⁷ It does not appear from the facts that Luden Entertainment falls into any of these reporting categories. It is a foreign nonprofit entity that presumably operates exclusively in Mexico and does not otherwise appear to be the type of

⁷ Section 89506(a) of the Act also exempts from the \$440 gift limit, although still requires reporting of, payments for travel related to an issue of public policy when paid by, among other types of entities a government agency, domestic or foreign, and an entity, or its foreign equivalent, that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Under the facts, this would appear to apply to this travel because it relates to your agency's business and is paid by a foreign equivalent to a 501(c)(3) entity. However, as explained in the text, there is no need to apply this exception to the gift limit because this payment is not reportable under your agency's conflict of interest code and thus not subject to the gift limit. The gift limit exception in Section 89506(a) also applies to travel provided in connection with a speech made on an issue of public policy, but the speech must be in the United States.

organization that would contract or engage in real estate activities with the Association. Therefore, under these facts, you are not prohibited from accepting this travel payment from Luden Entertainment and you are not required to report the payment on your Statement of Economic Interests.⁸

However, as explained above, even when a official receives a gift that is not reportable or subject to the gift limit, the Act provides that the gift at or above the gift limit can be the basis for a potential conflict of interest under Section 87100. (Sections 87100 and 87103.) Specifically, the official would have a conflict of interest if he or she makes, participates in making or uses his or her official position to influence a governmental decision that would have a reasonably foreseeable material financial effect on the source of the gift within the 12-month period following when the gift is made. (*Ibid.*) Although, as explained, it is unlikely that Luden Entertainment will have business before the Association at any point in the future, you must nevertheless be vigilant in the event it does, and disqualify yourself from participation in any governmental decision that would have a reasonably foreseeable material financial effect on that entity.

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: Scott Hallabrin
Counsel, Legal Division

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⁸ Because we have determined that you are not prohibited from accepting this travel payment under these provisions of the Act, we need not determine whether any exception under the newly-adopted Payments for Travel Made in Conjunction with Official Agency Business (Regulation 18950.1) would apply.