



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

April 10, 2014

Lori J. Barker
City Attorney
411 Main Street 3rd Floor
PO Box 3420
Chico CA 95927

Re: Your Request for Advice
Our File No. A-14-034

Dear Ms. Barker:

This letter responds to your request for advice on behalf of Chico City Council Member Ann Schwab regarding the gift provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Are the payments by the Chico Velo Cycling Club ("Chico Velo") related to registration, travel, and accommodations considered gifts to Councilmember Schwab?
2. Are the payments by the University Foundation of Chico State ("Foundation") related to registration, travel, and accommodations considered gifts to Councilmember Schwab?

CONCLUSION

1. Chico Velo's payments for registration, travel and accommodations are income under the Act if Councilmember Schwab provided consideration of equal or greater value. It appears from the facts that the payments are income rather than gifts. Income payments that are reimbursement for travel expenses and per diem and received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are exempt from the Act's reporting provisions pursuant to Section 82030(b)(2).

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. If Councilmember Schwab would have been provided the travel payments without consideration of her official status as a councilmember, but based upon her position as Chair of the committee, the travel payments would be considered income under the Act. Income payments that are reimbursement for travel expenses and per diem and received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code are exempt from the Act's reporting provisions pursuant to Section 82030(b)(2).

FACTS

Councilmember Schwab is the President of the Board of Directors for Chico Velo Cycling Club (Chico Velo), a nonprofit 501(c)(3) corporation. That position is unpaid and she serves on the board of directors as a volunteer who actively advocates for and encourages cycling in Northern California through a variety of programs. As president of the board of Chico Velo, Councilmember Schwab, along with other directors, makes policy decisions regarding the groups' fundraising and social events, public education activities and various bicycle safety programs, including the "Light Up Chico Program," that provides free front and rear bicycle lights to Chico police officers and members of the community. As consideration for the director's services, Chico Velo offers to pay for its directors to attend training sessions and seminars related to their duties as board members. The sessions include education programs for safe routes to schools, events encouraging women cyclists, and activities that encourage networking with other cycling clubs. Chico Velo pays for registration for the event, and for travel and accommodations at these events.

Councilmember Schwab is also the Chair of the Rawlins Advisory Committee ("Committee"). The Committee is composed of local agriculture and business leaders, public officials, and educators appointed by the Dean of Chico State's College of Natural Sciences. The Committee members oversee the position of the Rawlins Endowed Professor of Environmental Literacy and determine its priorities. The Rawlins Professor is a faculty member in the College of Natural Sciences who teaches one conservation or similar course. The Rawlins professor is responsible for ensuring that students who enter California State University, Chico are exposed to a variety of learning experiences about the state of the environment and ways to participate in reversing its decline. The endowment for the Rawlins Professor is managed through the University Foundation of Chico State ("Foundation"), a 501(c)(3) nonprofit corporation.

Members of the Committee serve as volunteers, and Councilmember Schwab is not paid for her participation as a committee member. She was appointed to the committee in 2005 by the Dean of the College of Natural Sciences while she was already serving on the Chico City Council.

The Committee offered to send Councilmember Schwab to a conference entitled "Sustainable City Year" ("SCYP"). SCYP is a three-day conference for city and education officials who are interested in adopting sustainability models in their communities. Councilmember Schwab is the only committee member who was offered this opportunity. The

other committee members voted to pay for Councilmember Schwab's expenses to attend the conference because "the conference related to her role as a city councilmember, as well as a committee member."

ANALYSIS

Gift Rules and Exceptions

The term "gift" is defined in Section 82028(a) 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.]

Absent an exception, travel costs paid for by a third party for which the official does not provide consideration of equal or greater value are generally reportable gifts under the Act. Under some circumstances, even though a payment for transportation, lodging, and subsistence will be a reportable gift and subject an official to a possible conflict of interest under the Act, the gift may be exempt from the Act's gift limit, which is currently \$440.

Section 89506(a), in relevant part, provides an exception from the gift limits for certain travel payments:

"(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either the following apply:

"(1)

"(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institutions, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code."

According to your facts, both Chico Velo and the Foundation are nonprofit corporations exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. The training sessions, seminars and conferences you described appear reasonably related to a legislative or

governmental purpose. Thus, if the payments are a gift from either source they are not subject to gift limits.

However, when an official receives a gift that is not subject to gift limits as provided in Section 89506, the gift is still reportable and can be the basis for a potential conflict of interest under Section 87100. (Sections 87100 and 87103.) Specifically, the official has 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 a gift or gifts aggregating in value to \$250 or more within the 12-month period following the date the gift is made.

Income Rules and Exceptions

To the extent that consideration of equal or greater value is provided to the source of the payment, the payment may be considered income rather than a gift. "Income" is broadly defined at Section 82030(a) to include all forms of payment received by a public official, including reimbursement of expenses and per diem payments, and also must be reported on an official's Form 700.

However, Section 82030(b)(2) provides a limited exception from the definition of "income" for "reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Assuming that consideration of equal or greater value is provided to the source of the payment, it is exempt from the definition of "income" under the Act and is therefore not subject to the gift limits or reportable.

Accordingly, the facts you have provided with regard to payments by Chico Velo for Councilmember Schwab to attend training sessions and seminars directly related to her duties as President of the board of Chico Velo appear to satisfy your burden to establish that the payment is not a gift because adequate consideration through her service and duties as President of the board of Chico Velo was provided. The payment is exempt from treatment as income because of the exception for travel expenses and per diem under Section 82030(b)(2). Therefore, such payments are not subject to gift limits or reportable under the Act.

Under your second set of facts, the proposed travel payments from the Foundation for Councilmember Schwab to attend a conference entitled "Sustainable City Year" are most likely also not gifts, but exempt income under the Act. The payments were offered to her because she is the Chair of the Committee and the topic of the conference is specifically related to the functions of the Committee. As such, these payments are not subject to the gift limits or reportable under the Act. However, if the payments would not have been offered but for her position on the city council, the travel payments would be considered reportable gifts not subject to limits under Section 89506.

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

Sincerely,

Zackery P. Morazzini
General Counsel

A handwritten signature in black ink that reads "Emelyn Rodriguez". The signature is written in a cursive style with a large, looping initial "E".

By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl