

December 5, 2014

Richard Egan
P O Box 1432
Susanville, CA 96130

Re: Your Request for Advice
Our File No. A-14-197

Dear Mr. Egan:

This letter responds to your request for advice regarding your duties as Chief Administrative Officer of Lassen County under the conflict of interest provisions of the Political Reform Act (the "Act").¹ This letter and all Fair Political Practices Commission (the "Commission") advice are based on the facts presented. The Commission does not act as a finder of fact when rendering advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Government Code section 1090.

QUESTION

You are the Chief Administrative Officer of Lassen County and in your private capacity raise cattle. May you accept a gift of free attendance to the 2015 Ranching for Excellence Meeting and National Finals Rodeo in Las Vegas, valued at approximately \$1,000, from Zoetris, an animal health medicine corporation with which you have done business in your private capacity?

CONCLUSION

The free benefits you will receive are a reportable gift to you and are subject to the \$440 gift limit unless the "payments" are a rebate or discount made in the regular course of business to members of the public without regard to official status. We do not have sufficient information to

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.

determine if the rebate or discount exception applies in your case. You should inquire with the donor as to whether the gift to you meets the terms of the statutory exception.

FACTS

You are the Chief Administrative Officer of Lassen County. You have been invited to attend the 2015 Ranching for Excellence Meeting and National Finals Rodeo in Las Vegas by Zoetis, a corporation that “discovers, develops, manufactures and commercializes a diverse portfolio of animal health medicines and vaccines designed to meet the real-world needs of veterinarians and the livestock farmers and companion animal owners they support.” (<http://www.zoetis.com/about/at-a-glance>.) The program is a one-day program, and the offer from Zoetis includes airfare from Reno to Vegas, a two night hotel stay, meals and two tickets to the National Finals Rodeo in Vegas. You stated that the total estimated value is approximately \$1,000 or less. You stated that you believe that Zoetis offers this type of educational/recreational “gift” to other clients that conduct the same type and amount of business with their company.

You have been doing business with Zoetis for approximately 20 years and use their products almost exclusively for your cow herd of approximately 400 mature cows. You do not believe that Zoetis has done business with the County of Lassen in the past and do not believe Zoetis will do business with the county in the future.

ANALYSIS

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.”

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

- First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to, among others, all individuals in positions listed in Section 87200. (Section 89503.) Section 87200 includes chief administrative officers of counties.
- Secondly, the Act imposes reporting obligations on certain public officials, requiring that any gifts that aggregate to \$50 or more from the same source received during the calendar

year are disclosed on the officials' statements of economic interest. Reporting requirements apply to all officials listed in Section 87200.

- Finally, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of 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 the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18703.4.)

Thus, absent an exception, you would be prohibited from accepting gifts from a single source that aggregate to \$440 or more in a calendar year.

Exceptions

You asked specifically about the exception in Regulation 18942(a)(19) that provides:

“Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official’s agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official’s position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.”

However, the source of the gift under your facts is a corporation and not an individual. The term “individual” is a reference to a natural person and not to an organization or business entity.

Section 82028 includes another exception where a rebate or discount in the price of anything of value is made in the regular course of business to members of the public without regard to official status. Thus, the exception requires that the gift offer meet the following:

- (1) It must be in the regular course of Zoetis’ business.
- (2) And it must be available to members of the public without regard to official status.

Consequently, if Zoetis offered the discount in the regular course of business to members of the public, including to you, without regard to official status, the payment would not be a gift. Relevant to this inquiry is whether Zoetis has offered these free invitations as part of their business practice in the past, how many such invitations to the 2015 event are being offered, and how many of those offered are to public officials and how many are to nonpublic officials.

We do not have information as to whether in fact Zoetis program meets this exception; we must leave this determination to you after obtaining the relevant facts. As noted above, the Commission does not act as a finder of fact when rendering advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

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

Sincerely,

Zackery P. Morazzini
General Counsel

By: John W. Wallace
Assistant General Counsel,
Legal Division

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