



FAIR POLITICAL PRACTICES COMMISSION

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May 6, 2013

Michael Rubio  
c/o Attorney James C. Harrison  
Remcho, Johansen & Purcell, LLP

**REDACTED**

**Advisory Letter Re: FPPC Case No. 13/081, Michael Rubio**

Dear Mr. Rubio:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),<sup>1</sup> found in Government Code Section 81000, et seq. As you are aware, the Commission was reviewing whether, as a State Senator, you were in violation of both the Statement of Economic Interests disclosure provisions as well as the gift limit prohibitions of the Act in both the sale of your Bakersfield property and the purchase and ultimate sale and lease of the El Dorado Hills property.

The portion of this case pertaining to the required disclosure of the buyer of the Bakersfield property is pending a proposed resolution at the May 2013 Commission meeting. As regards the other aspects of the case, although there is insufficient evidence to find that you violated the Act with respect to receipt of possible gifts over the limit, we are issuing this Advisory Letter to guide your future conduct and that of other public officials with regard to closely examining specific factual circumstances as they relate to whether or not a gift has been received.

First, we begin with the definition of income, which is defined under the Act as:

a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse.

(GC § 82030.)

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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.

Conversely, although “income” includes any gift, the term “gift” is specifically defined in Gov. Code § 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.

The Act places limitations on the acceptance of gifts by certain public officials. Certain state and local officials, including members of the Legislature, are prohibited from accepting gifts from any single source in any calendar year with a total value of more than the gift limit. (GC § 89503(a).) The gift limit, which is adjusted biennially each odd number year to reflect changes in the Consumer Price Index, was \$420 in 2011 and 2012, the relevant years for the investigation. (Regulation § 18940.2.)

So that the public is made aware of any potential undue influences from donors who make gifts, even if the gift is valued at below the limit, the Act imposes reporting obligations requiring certain public officials, including members of the Legislature, to disclose the source of any gifts aggregating \$50 or more in value. Gov. Code § 87203 provides that “every person who holds an office specified in Section 87200 shall . . . file a statement disclosing his [or her] investments, his [or her] interests in real property and his [or her] income . . .” Elected State Officers, including Members of the Legislature, are included in Gov. Code § 87200. (Also see GC § 82024.)<sup>2</sup>

One area of review was that your home in Bakersfield may have been purchased in 2011, with negotiations beginning in 2010, at an inflated price and, perhaps even because of your official status as a member of the Kern County Board of Supervisors and as a candidate for, and then member of, the State Senate. However, you provided documentation to establish that the property was purchased at the fair market value of its price at the time and that the resulting payment would be considered to be income under the Act rather than a gift. We also understand that although the payment would be considered income, the payment went to the lender and not to you personally.

The other area of review we address in this advisory letter was that, due to financial issues you faced in your move to the Sacramento area upon becoming a Senator, you secured a loan from the company that purchased your Bakersfield property, a company whose principal is a close personal friend of yours, to purchase an El Dorado Hills home. This company provides real estate loans to individuals and companies and we found that the loan provided was a short-term loan with a six-month term and a six percent interest rate, which is higher than a market rate for a typical mortgage. Thus, the terms of the loan were found to run counter to the definition of a gift as a benefit that confers a personal benefit for which you did not provide payment or services of

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<sup>2</sup> The third aspect of receiving a gift is that public officials are subject to the Act’s conflict-of-interest rules. However, members of the Legislature are only subject to conflict-of-interest prohibitions in connection with any rollcall vote on an item which the member knows is nongeneral legislation. (GC §§ 87100 and 87102.5.) We found no evidence to suggest this had occurred.

equal or greater value. (Section 82028.) Later, it appears that your subsequent concern over the appearance of possible impropriety in your friendship with the lender prompted you to accept a quitclaim deed in full settlement of the loan. After you ceded ownership of the home, you continued to live in the home while renting it from the original lender. Evidence of your payments to the lender demonstrates the rent as being at market rate.

Because the transactions between you and DCM were commercial transactions conducted on terms available to the general public without being apparently specifically designed to provide personal benefit to you, neither the gift limit nor the gift disclosure requirements of the Act will apply. We hope that the above explanation of our findings in these matters assists you in future. If you have questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

**REDACTED**

Gary Winuk, Chief  
Enforcement Division