BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:	)	
	)	
Opinion requested by	)	No. 75-094-B
Kenneth Cory	)	October 23, 1975
Controller of the State of California	)	
	)	

BY THE COMMISSION: We have been asked the following questions by Kenneth Cory, Controller of the State of California:

(1) Over the years, many kinds of unsolicited gifts have been received by Controllers, such as wall plaques, floral arrangements, framed pictures, table ornaments and perishables. Many such gifts are unique and not sold commercially. How should Mr. Cory determine the fair market value of such gifts? Would an in-office "estimate" be sufficient for purposes of the Political Reform Act?

(2) If a neighbor volunteers his assistance in repairing a fence or structure on Mr. Cory's property, must Mr. Cory report the value of the neighbor's services as a gift? If so, how should the value of the neighbor's services be determined?

CONCLUSION

(1) For purposes of disclosure under Government Code Section 87207, a reasonable estimate based on a good faith effort to ascertain the value of the gifts will suffice. There is no need to retain the services of an outside appraiser.

(2) Volunteer personal services rendered by a neighbor are not gifts under Chapter 7 of the Political Reform Act.

ANALYSIS

As an elected state officer, as defined in Government Code Section 82021,1/ Controller Cory must file periodic statements disclosing his income. Sections 87200, et seq. The term income, as defined in Section 82030, includes gifts, except for gifts of informational material, gifts which are not retained by the donee and gifts from specified relatives.2/

(1) Value of unsolicited gifts

Section 87207 requires the disclosure of certain information about each gift valued at twenty-five dollars or more, or gifts aggregating twenty-five dollars or more in value if received from the same source. The recipient must disclose the name, address and business activity of the donor and "the amount and date on which the gift was received." Section 87207(a)(4).

Reporting unique or unusual gifts may place a substantial burden on the recipient who seeks to ascertain the value of each item. Although in many cases the donor will be able to reveal the value of the gift, this will not always be the case. When the donor does fail to do so, the Controller or his staff, on the basis of their best judgment or experience, may make a reasonable approximation. An aid to making such an approximation can be the price of similar items. See Bagdarian v. Gragnon, 31 C. 2d 744, 755 (1948). If similar items are not available as a guide, more subjective methods of approximating value may be appropriate. However, in all cases, a good faith estimate by the Controller or his staff is sufficient.

1/ All statutory references are to the Government Code unless otherwise stated.

2/ Section 82030 provides, in pertinent part, that:

(a) "Income" means, except as provided in subsection (b), income of any nature from any source, including but not limited to any ... gift ....

(b) "Income" does not include:

....

(3) Gifts of informational material, such as books, pamphlets, reports, calendars or periodicals;

(4) Gifts which are not used and which, within thirty days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

(5) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift from any such person shall be considered income if the donor is acting as an agent or intermediary for any person not covered by this paragraph; ....

Section 81004 requires all statements filed under the Political Reform Act to be verified and, further, requires the verification to state that the filer has used all reasonable diligence in its preparation and that, to the best of the filer's knowledge, the statement is true and complete. A good faith effort by the Controller and his staff constitutes reasonable diligence as required by statute. There is no need to retain a professional appraiser.

(2) Assistance voluntarily rendered by a neighbor

The Controller is not required to report the volunteer assistance he receives from a neighbor in repairing a fence or structure on his property. To be sure, one could determine a fair market value for such personal services and such services might exceed twenty-five dollars, the threshold for reporting gifts. Section 87207(a)(1). However, common sense rejects such a conclusion; the Political Reform Act is not concerned with such matters.

The financial disclosure provisions of the Act are premised on the notion that:

> Assets and income of public officials which may be materially affected by their official actions should be disclosed ...:
>
> Section 81002(d).

If any matter comes before the Controller's office in which his neighbor is interested, Mr. Cory may or may not be subjectively biased as a result of his like (or dislike) for the neighbor, but certainly no bias will be caused by Mr. Cory's fear that his "income" will be materially affected.

In any tolerable society, people lend assistance to their acquaintances and even to strangers in ways which have theoretical economic value but do not, in any real sense, represent economic transactions. It is absurd to suppose that the repairing of a fence by a neighbor, the offering of a ride, the fixing of a flat tire or hundreds of similarly friendly acts are "gifts" which must be reported under the Act. Just as volunteer services in political campaigns represent little threat to the electoral process and, therefore, are excluded from the definition of "contribution," Section 82015, everyday acts of fellowship constitute little threat to the integrity of public officials.

In a related matter, the Commission has recognized, in effect, that hospitality in the home is likely to be more social than economic, and has excluded such hospitality from the term

"gift," albeit with safeguards against abuse. 2 Cal. Adm. Code Section 18727.[3] Neighborly services such as those in question here are even further removed from the purposes of the Political Reform Act and less susceptible to abuse.[4]

Approved by the Commission on October 23, 1975. Concurring: Brosnahan, Carpenter and Lowenstein. Dissenting: Miller. Commissioner Waters was absent.

Daniel H. Lowenstein
Chairman

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[3] Section 18727 states:

> For the purposes of Government Code Section 87207(a), the term "income" does not include the value of gifts of hospitality involving food, beverages or lodging provided to any person filing a statement of economic interests if such hospitality has been reciprocated within the filing period.
>
> "Reciprocity" as used in this paragraph includes the providing by the filer to the host of any consideration, including entertainment or a household gift of a reasonably similar benefit or value.

[4] This opinion involves the normal or customary types of voluntary services rendered by a neighbor. Our conclusion in this case would not be controlling if the service rendered were unusually valuable or if it involved the purchase of substantial quantities of supplies or materials by the neighbor.

MILLER, COMMISSIONER, DISSENTING IN PART: I dissent from part two of the opinion wherein the majority holds that voluntary services exceeding twenty-five dollars ($25) in value provided by a neighbor to an elected state officer need not be reported as a gift pursuant to Sections 87203 and 87207(a)(1).

In order to assure that "public officials, whether elected or appointed, ... perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them," (Section 81001(b)) the Act requires certain public officials to periodically disclose "the name and address of each source of income ... aggregating twenty-five dollars ($25) or more in value if the income was a gift ...." (Section 87207(a))

Income, which includes gifts, is defined in Section 82030(a) so as to include income "of any nature from any source." However, Section 82030(b) excludes as income certain gifts such as informational material, gifts returned within a certain period or delivered to a charitable organization and gifts from certain relatives. Significantly, no exception is created for volunteer services provided by a neighbor. Thus, the majority opinion creates an exception not recognized by the Act.

The majority attempts to justify this new exception to the definition of income on the ground of "common sense." Those who drafted the Political Reform Act could easily have included a "voluntary services" exception had they so chosen. But it must be presumed that they considered and rejected this "common sense" approach now urged. The twenty-five dollar de minimis provision in the Act was probably designed to deal with the problem the majority perceives. By creating a new exception, the majority is, in effect, substituting its judgment for that of the people as to what is necessary to carry out the purpose of the Act. Members of the Commission have no such authority.

The majority recognizes the dangers inherent in its approach. The majority notes that the opinion involves "the normal or customary types of voluntary services rendered by a neighbor" and that the "conclusion ... would not be controlling if the service rendered were unusually valuable or if it involved the purchase of substantial quantities of supplies or materials by the neighbor." Supra, n. 4, at p. 4. But the willingness of the majority to pursue such a path invites the day when the Commission will have to decide whether the roofing of a vacation house at Lake Tahoe or the rebuilding of an outboard motor is a "normal or customary type of voluntary service" or whether it is "unusually valuable." It is a path which need not and should not have been taken.

Anthony L. Miller