BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of.	)	
	)	
Opinion requested by	)	No. 75-135
Blanche Russel,	)	December 3, 1975
Holiday Inn of Hollywood	)	
	)	

BY THE COMMISSION: We have been asked the following question by Blanche Russel, Director of Corporate Relations for the Holiday Inn of Hollywood:

Holiday Inn of Hollywood offers a discount to all state employees. The state government rate is $16.00 a night for a single room, as opposed to the regular rate of $23.00. The rate, offered as an economic incentive to stimulate volume business, is similar to the corporate rate offered to industries, associations and organizations ($19.00 a night)

Holiday Inn of Hollywood does not employ a lobbyist or directly engage in other activities to influence legislative or administrative action. The Inn is, however, one of 700 members of the California Hotel and Motel Association, an association which does retain a lobbyist.

To publicize the state government rate, the Hollywood Holiday Inn sent state government discount cards to all state legislators. The Inn also sent cards to the legislators' secretaries, but did not send cards to all state employees. Several of the legislators returned the cards and indicated that they did so because of restrictions imposed by the Political Reform Act. As a result, Ms. Russel has asked:

What restrictions does the Political Reform Act impose on the state government rate offered by the Holiday Inn of Hollywood?

CONCLUSION

The Political Reform Act does not impose any restrictions or reporting requirements on those who offer discounts to all state employees or on public officials who take advantage of such discounts if the discount is uniformly offered to all state employees. The state government rate offered by the Holiday Inn of Hollywood has not been offered on a uniform basis and is, therefore, income to the elected state officers who receive it.

ANALYSIS

Hollywood Holiday Inn has asked what restrictions or obligations are imposed by the Political Reform Act, Government Code Sections 81000, et seq.,1/ by reason of the discount it provides to all state employees. As long as the Hollywood Holiday Inn does not employ a lobbyist or make expenditures to influence legislative or administrative action, the Political Reform Act does not impose any obligations on the Inn relative to its discount program. In addition, no person is prohibited from taking advantage of the state government rate because of the Act.

The only remaining area of uncertainty is whether or not a public official who takes advantage of the rate has received "income," as that term is defined in the Political Reform Act. Of course, income reporting does not, strictly speaking, relate to the legal duties of the Hollywood Holiday Inn.2/ However, whether or not a discount is reportable as income depends on the conduct of the entity offering the discount. The standards we set forth in this opinion pertain to how a discount is publicized and to whom it is offered. Holiday Inn has an interest in ascertaining these standards so that it can plan its marketing strategy. If the government discount is going to impose additional reporting obligations on certain officials and, as a result, possibly dissuade them from using Holiday Inn's facility, Holiday Inn may want to restructure its program. Under these circumstances, we think it appropriate to reach the issue of disclosure by officials who receive the state government rate.3/

Sections 87200, et seq., require elected state officers to file periodic statements disclosing their income, investments and interests in real property.4/ "Income" is defined in Section 82030 to mean "income of any nature from any source, including but not limited to ... any ... discount in the price of anything of value unless the discount is available to members of the public without regard to official status ...."

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

2/ Government Code Section 83114 provides that "any person may request the Commission to issue an opinion with respect to his duties under this title ...."

3/ We have issued two opinions which did not pertain to the duties of the requestor but which raised substantial questions of interpretation. Opinions requested by L. T. Wallace, 1 FPPC Ops. 118 (No. 75-087, September 4, 1975); Senator Donald L. Grunsky, 1 FPPC Ops. 115, (No. 75-117, October 23, 1975). Both requests were accepted before the Commission adopted regulations clarifying the meaning of Section 83114.

4/ "Elected state officer" means the Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, member of the Legislature, and member of the State Board of Equalization. Sections 82021, 82024.

After considering the language and purposes of the Political Reform Act, we conclude that a discount made available on a uniform basis to all state employees is a discount available to members of the public without regard to official status. Accordingly, such a discount is not income and is not subject to disclosure under the Political Reform Act.

Income disclosure is required so that assets and income of public officials which may be materially affected by their official actions will be disclosed. Section 81002(d). Discounts are included in the definition of income so that officials who are offered special reductions when they purchase goods and services will disclose those transactions for public scrutiny. However, many discounts are offered to all members of the public and do not create any potential for improper influence. Requiring the disclosure of all discounts would impose burdensome reporting requirements without serving a legitimate public purpose. Consequently, the statutory definition of "income" excludes discounts which are made available to members of the public without regard to their official status.

Arguably, the words "official status" could refer to an official's status as a state employee. However, the Political Reform Act is concerned with disclosure of income that may be affected by a public official's "official actions," and official actions are those acts done in one's official capacity under color and by virtue of one's office. Gunsul v. Ray, 6 Cal.App 2d 528, 530 (1935). We think that the purposes of the Political Reform Act are best served by interpreting the words "official status" to refer to the capacity in which one performs official actions. We conclude, therefore, that the "official status" of state legislators is their status as elected state officers, not their status as state employees. Consequently, a discount that is available to all employees of the State of California, without regard to what office or position they hold in state government, is a discount made available "without regard to official status."

A discount which is not includable as income must not only be made available "without regard to official status," it must be made available to "members of the public." The statutory language does not require that the discount be made available to "all" members of the public, but implies that the discount will be offered on a uniform basis to a diverse group. In the circumstances posed by this opinion request, the discount is made available to all employees of the State of California. This group is a large and heterogenous assortment of individuals which includes more than 130,000 persons.5/ Because of the size and diversity of the class, we conclude that a discount available to all state employees is a discount made "available to members of the public."

5/ State of California Personnel Statistics, California State Personnel Board, Table 30 (July 1975).

One further problem, however, is presented by this opinion request. Holiday Inn of Hollywood chose to publicize its marketing program by appealing initially to state legislators and not to all state employees. The discount must be offered on a uniform basis to all state employees in order to be made available "without regard to official status." If discount cards or other forms of special notice are given only to high ranking officials, the discount is not offered on a uniform basis to all state employees and thus is not made available "without regard to official status." To the contrary, such special favors create an inference that the discount is made available because of the official status of the recipients. By sending discount cards to legislators and their secretaries, Holiday Inn of Hollywood offered the discount to a limited number of high ranking officials without taking appropriate measures to offer the discount to other state employees on a uniform basis.

Under these circumstances, an elected state officer who takes advantage of the state government rate has received a discount which is not made available to members of the public without regard to official status. The seven dollar difference between the regular rate of $23.00 and the state government rate of $16.00, therefore, is income to the official

Approved by the Commission on December 3, 1975. Concurring: Brosnahan, Carpenter and Lowenstein. Dissenting: Miller. Commissioner Waters was absent.

Daniel H. Lowenstein
Chairman