

State of California



Fair Political Practices Commission

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July 21, 1983

Charles Imbrecht, Chairman
Energy Commission
1516 Ninth Street
Sacramento, CA 95814

Re: Your Telephone Request for
Advice, Our No. A-83-175

Dear Mr. Imbrecht:

This letter is in response to your telephone request for advice. You are the Chairman of the California Energy Commission, which is undertaking a methanol test fleet program utilizing various types of vehicles included busses, trucks, autos and tractors. The program involves numerous contractors and subcontractors. The purpose of the program is to develop technologies to reduce both the energy demands and the air pollution of transportation vehicles.

In the near future the first of the methanol test vehicles will be rolling off their respective assembly lines. The first car will be completed by Ford in August in Los Angeles and will be formally presented to you and to the Governor in a ceremony at that time. The first bus will be completed by General Motors in Detroit and a ceremony is likewise planned for that event.

The Oxygenated Fuels Association ("Association") consists of nine or ten methanol producers from around the country, including Borden, Celanese, Du Pont, etc. It is an industry association formed to encourage the use of methanol as an alternative fuel source. The Association has offered to pay for the cost of having appropriate representatives of the Energy Commission and the Air Resources Board attend the ceremony in Detroit to speak and to formally accept the first methanol bus for the state's fleet.

You have asked whether this arrangement will create any potential conflict of interest problems and/or require disclosure if the representatives who attend are persons

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involved in decision-making relative to this project, given that members of the Association are contractors for the project.

If the event were taking place in California and the travel expenses included only transportation, free admission, food, beverages and similar nominal benefits provided to the officials at an event at which they were speaking, then these sums would not constitute income, would not be reportable and could not form the basis for disqualification.^{1/} 2 Cal. Adm. Code Section 18728(a). Since the event is outside California the travel expenses would be reportable (and possibly disqualifying) if provided to the officials directly.^{2/}

However, if the travel expenses are given to the state (in this case to the Energy Commission and the Air Resources Board), then they are not attributable to the officials who make the trip so long as certain criteria are satisfied. Those criteria are set forth in the Commission's Stone Opinion, No. 77-003, 3 FPPC Opinions 52, 57, June 9, 1977 (copy enclosed). In the Stone Opinion, which involved officials of the City of San Jose, the Commission stated as follows:

There may be some situations, however, where surrounding circumstances show that the gift was made to the city only, without providing any significant or unusual benefit to the official. In such a case, the official would have no reporting obligation since whatever he receives, although free of charge to both him and the city, would be analogous to reimbursement for expenses or per diem from a state or local government agency, items which are not reportable. Section 82030(b)(2). While no immutable guidelines can be cast for determining when a gift of this nature is a gift to the city only, and not the official, we would require it to satisfy at least the following four criteria:

1. The donor intended to donate the gift to the city and not to the official;

^{1/} Any honorarium paid for actually speaking would be reportable as income if it equaled or exceeded \$250.

^{2/} See footnote 1, supra. Furthermore, if a lobbyist is involved in making or arranging any gift, the amount involved could not exceed \$10.

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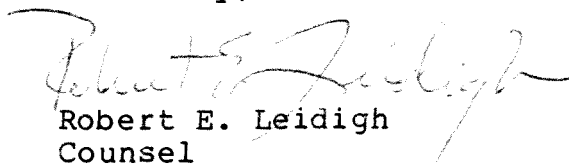
2. The city exercises substantial control over use of the gift;
3. The donor has not limited use of the gift to specified or high level employees, but rather has made it generally available to city personnel in connection with city business without regard to official status; and
4. The making and use of the gift was formalized in a resolution of the city council (a written public record will suffice for administrative agencies not possessing the legislative power of adopting resolutions) which embodies the standards set forth above.

To the extent that the gift of free air transportation in the instant case satisfies the above standards it will not subject the city officials to any reporting obligation pursuant to the Political Reform Act. To the extent that these standards are not satisfied, however, the officials must report the receipt of such a benefit as a gift if its value is [\$50] or more. . . .

Consequently, if the Association donates the gift of transportation costs to the Energy Commission and to the Air Resources Board and those respective bodies exercise control over the funds, determine who is to go to the ceremonies, and adopt formal resolutions or take similar publicly recorded actions memorializing these events, then the officials who undertake the travel (so long as their travel mode, accommodations and meals are the norm for state-reimbursed travel), would have received no significant or unusual benefit, and, thus, no gift. Therefore, no reporting or disqualification would be required.

Should you have any further questions, do not hesitate to call me at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

REL:plh
Enclosure