



FAIR POLITICAL PRACTICES COMMISSION

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February 9, 2010

Shannon Brady
Legislative Assistant
Kaiser Permanente Governmental Relations
1215 K Street, Suite 2030
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-09-269

Dear: Ms. Brady:

This letter responds to your request for advice regarding the gift reporting provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. If Kaiser provides an official a ticket to a nonprofit fundraising event, what is the value of the ticket?
2. If Kaiser provides a ticket to a nonprofit fundraiser to an official's spouse, would the spouse's ticket be a reportable gift to the official?

CONCLUSIONS

1. An official may receive one ticket per event if the ticket is provided to the official by a 501(c)(3) nonprofit *for its own fundraising* and it shall be deemed to have no value so long as the cumulative value of the nondeductible portion of the ticket does not exceed the gift limit.² This ticket is not a gift if, and only if, the nonprofit fundraising organization provides the ticket directly to the official. If, however, the ticket is for a seat at a table provided to Kaiser for a fundraising event for another organization, the value is face value of the ticket.

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.

² The gift limit is currently set at \$420 from a single source in a calendar year.

2. Kaiser's gift to an official's spouse of tickets to a nonprofit fundraiser would be deemed a reportable gift to the official unless there is a substantive, social or similar relationship between Kaiser and the official's spouse.

FACTS

Kaiser Permanente ("Kaiser"), a nonprofit 501(c)(3) and lobbyist employer, often sponsors nonprofit fundraisers. Kaiser will be given a table, which typically includes a dinner at a nonprofit fundraising event. For example, a typical contribution for Kaiser would be about \$10,000 to sponsor an event. Kaiser is usually given a table at the event that seats about 10 people. You would like clarification regarding how to value tickets to a fundraising event, especially in context of the "no value" rule in Regulation 18946.4. In addition, if Kaiser offers a ticket to a public official and his or her spouse, you would like to know if the ticket given to spouse is a reportable gift to the official.

ANALYSIS

Gifts – Generally:

The Act establishes a statutory and regulatory scheme to reduce influences on public officials from the receipt of gifts.

First, it prohibits certain public officials from accepting large gifts (currently the gift limit is \$420) from identified sources. (Section 89503; Regulation 18940.2.)³

Second, it requires certain public officials to disclose their receipt of gifts of \$50 or more from identified sources, so that the public is made aware of such gifts. (Sections 87207 and 87302.) Finally, it prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift valued at \$420 or more. (Section 87100, 87103(e), Regulation 18940.2.)

Section 82028 defines "gift" as:

"[A]ny 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."

³ Note that Section 86203 prohibits lobbyists from making or arranging for the making of gifts of more than \$10 in a calendar month to any legislative official and to officials of state agencies the lobbyist attempts to influence.

Tickets Provided By Nonprofits for Their Fundraising Events:

Regulation 18946.4 specifically addresses valuation for tickets or passes provided by a nonprofit or political organization for *its own* fundraising events. It “applies to a *single ticket* or other admission privilege to a specific fundraising event provided to a public official by a nonprofit or political organization holding its *own* fundraiser and *used solely by the public official.*”

Regulation 18946.4 provides in pertinent part:

“(a) Nonprofit Fundraiser. Except as provided in subdivision (b), the value of a gift of a ticket, pass, or other admission privilege to a fundraising event for a nonprofit, tax-exempt organization that is not a committee covered by subdivision (c) is determined as follows:

“(1) Where the ticket clearly states that a portion of the ticket price is a donation to the organization, the value of the gift is the face value of the ticket reduced by the amount of the donation.

“(2) If there is no ticket indicating a face value or the ticket or other admission privilege has no stated price or no stated donation portion, the value of the gift is the pro rata share of the cost of any food, and beverages, plus any other specific item presented to the attendee at the event.

“(b) 501(c)(3) Organization Fundraiser. Where the event is a fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the organization may provide *one ticket per event to an official* and that ticket shall be deemed to have no value so long as the cumulative value of the nondeductible portion of the ticket(s), as provided in subdivision (a), received by the official from the same organization during a calendar year, does not exceed the gift limits imposed under Section 89503 and Regulation 18940.2. [Emphasis added.]

[. . .]”

Under this regulation, an official may receive one ticket per event provided by a 501(c)(3) nonprofit for its own fundraising during a calendar year up to a cumulative value of \$420,⁴ if, and only if, the organization provides the ticket to the official.

⁴ Regulation 18946.4(a) provides that where the ticket clearly states a portion of the ticket price is a donation to the organization, the value of the gift is the face value of the ticket minus any donation amount. Where there is no face value or the ticket has no stated price or donation portion, the value of the gift is the pro rata share of the cost of any food and beverages, any items provided to the attendee at the event.

Therefore, if Kaiser holds its own charitable fundraiser and provides a ticket directly to an official, the "no value" exception in Regulation 18946.4(a) may apply to the single ticket for the official's own use.

If Kaiser purchases a table for another organization's fundraising event and provides it to an official, then the full face value of the ticket or admission privilege is a reportable gift subject to the official subject to the \$420 gift limit.

Gifts to Official's Family Members

If the official receives two tickets to the fundraising event (one for the official and another for the official's spouse), the value of the second ticket may be attributed to the official under certain circumstances specified under Regulation 18944, which governs gifts to an official's family members. Note the following is based on amendments to Regulation 18944, which were adopted by the Commission in December 2009, and which take effect on February 10, 2010.

Regulation 18944, in pertinent part, provides:

"(c) A single gift given to both an official and one or more members of the official's family is a gift to the official for the full value of the gift.

(d) The following applies to a gift given solely to a member of an official's family:

(1) A gift given solely to a member of an official's family is a gift to the official when the gift confers a clear personal benefit on the official. A gift to an official's family member confers a clear personal benefit on the official in any of the following circumstances:

(A) It is reasonably foreseeable at the time the gift is made that the official will enjoy a financial benefit from the gift. A "financial benefit" from a gift includes, but is not limited to, a payment, other than occasional meals, lodging, or transportation, to fulfill a commitment, obligation, or expense of the type normally paid by a family for the ordinary care and support of one of its members.

(B) It is reasonably foreseeable at the time the gift is made that the official will use the gift, except for a minimal use.

(C) The official exercises discretion and control over who will use or dispose of the gift. Exercising "discretion and control" includes, but is not limited to, when an official, or his or her agent, requests a gift for, or to be used by, the official's family member.

(2) A gift given to a member of an official's family is a gift to the official if the gift confers a presumed personal benefit on the official. A gift to an official's family

member confers a presumed personal benefit on the official in any of the following circumstances:

(A) The gift is made to a family member of a state agency official who is subject to Section 87200 by a donor who is a lobbyist, lobbying firm, lobbyist employer, or other person 18 required to file reports under Chapter 6 (commencing with Section 86100) of the Act.

(B) The gift is made to a family member of a local government agency official who is 20 subject to Section 87200 by a donor who is or has been directly involved in a governmental 21 decision, as defined in Regulation 18704.1(a), in which the official will foreseeably participate or has participated in the prior 12-month period.”

Therefore, if Kaiser provides the two tickets to the official and does not designate one for the official’s spouse (or the official provides the second ticket to someone other than his or her spouse) then both tickets are gifts to the official for the full value even if one of the tickets is used by the official’s spouse.

If Kaiser provides a ticket solely for the official’s spouse and the spouse uses the ticket, the gift must be analyzed in the context of Regulation 18944(d)(1) and (d)(2).

Regulation 18944(d)(1) does not apply in this situation because Kaiser’s providing the official’s spouse a ticket to a nonprofit fundraising event would *not* confer a “clear personal benefit” on the official. The ticket to a nonprofit fundraiser would not be considered a “financial benefit” to the official because it is not a payment “to fulfill a commitment, obligation or expense of the type normally paid by a family for the ordinary care and support of its members.” (Regulation 18944(d)(1)(A).) The ticket, if provided for the spouse, is not a gift that the official will use. (Regulation 18944(d)(1)(B).) Lastly, a ticket provided directly to the spouse would not qualify as a gift to an official unless the official “exercises discretion and control over who will use or dispose of the gift.” (Regulation 18944(d)(1)(C).)

However, under Regulation 18944(d)(2), a gift provided to an official’s family member is *presumed* to confer a personal “benefit on the official” if: (1) the gift is made to the family member of an official who is subject to Section 87200⁵ and is made by a lobbyist, lobbying firm, lobbyist employer, or (2) the gift is made to the family member of a local government agency official who is subject to Section 87200 by a donor who is directly involved in a governmental decision in which the official will participate or has participated in a 12-month period.

⁵ Positions enumerated in Section 87200 include elected state officers, judges and commissioners of courts of the judicial branch of government, members of the Public Utilities Commission, members of the State Energy Resources Conservation and Development Commission, members of the Fair Political Practices Commission, members of the California Coastal Commission, members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, and chief administrative officers of counties, mayors, city managers, city attorneys, city treasurers, chief administrative officers and members of city councils of cities, and other public officials who manage public investments, and candidates for any of these offices at any election.

Because Kaiser is a lobbyist employer, the presumption under Regulation 18944(d)(2) applies if the official is subject to Section 87200, or the official is a local government agency official (subject to Section 87200) and Kaiser is directly involved in a governmental decision that the official will participate in, or has participated in, during a 12-month period.

Rebutting the Presumption:

There is no gift to an official under Regulation 18944(d)(2) if the official can show there is an established working, social, or similar relationship between the donor and the official's family member and the donor had no intent to confer a personal benefit directly on the official. (Regulation 18944(d)(3)(B).)

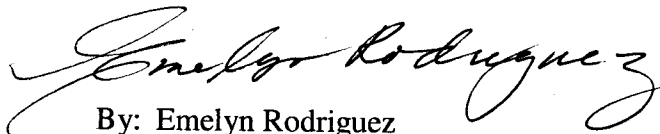
Therefore, under the facts presented, Kaiser's gift to an official's spouse of tickets to a nonprofit fundraiser would be deemed a reportable gift to the official unless there is an established working, social or similar relationship between Kaiser and the official's spouse.

For more information, enclosed please find a fact sheet regarding "Tickets to Nonprofit and Political Fundraisers: FPPC Regulation 18946.4 as Amended," which provides a more detailed explanation.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl

Enclosure