



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

July 2, 2021

Tyrone Buckley  
Assistant Deputy Director  
Department of Housing and Community Development  
2020 W. El Camino Avenue, Suite 500  
Sacramento, CA 95833

Re: Your Request for Advice  
**Our File No. A-21-051**

Dear Mr. Buckley:

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

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

Also note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

As a public official, does the Act restrict your ability to appear on a home renovation show?

### CONCLUSION

As discussed below, the Act would not prohibit your participation in the show. To the extent that you pay for all components of your project, your participation is neither income nor a gift under the Act. In the event that the network covers an unforeseen expense within the \$10,000 the network typically reserves for all participants on the show and to ensure final production, the payment is a discount offered in the regular course of business and, likewise, neither income nor a gift under the Act.

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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.

## FACTS AS PRESENTED BY REQUESTER

You were appointed by the Governor to the position of Assistant Deputy Director of Fair Housing at the Department of Housing and Community Development. You and your family have been invited to participate in a home improvement television show. Your partner initiated the process in response to a Facebook advertisement by submitting a brief description of your home and potential projects. You were subsequently offered the opportunity to appear on the show after a Zoom interview. The show is about a contractor and designer redesigning and remodeling your almost 100-year-old home.

You are not being paid to be on the show. You will pay for all components of your project, from design to construction. However, you note that if, during construction, the contractors discover something unexpected that will exceed your allotted budget, the tv network (HGTV) might cover that cost, so as not to delay the project or show. It is your understanding that there is a \$10,000 cost overrun budget for this purpose, but that any such expenditure is not going to be part of any contract, and no offer of any payment has been made.

## ANALYSIS

Public officials, other than those covered by section 87200, who make, participate in making, or use their official position to influence governmental decisions, must disclose certain economic interests, such as income and gifts, as required by their respective agency's conflict of interest code. (Sections 87300, 87302.) These public officials, referred to as designated employees, must generally report sources of income exceeding \$500 and the receipt of gifts valued at \$50 or more in the aggregate in a calendar year from a single source. (Sections 82030; 87302.) In addition, a designated employee may not receive a gift of more than \$520 from a reportable source in a calendar year. (Section 89503; Regulation 18940.2.) Pursuant to the Act's conflict of interest provisions, an official is also disqualified from taking part in governmental decisions if it is reasonably foreseeable that the decision will have a material financial effect on the official's interests including an interest in the source of income or a gift. (Section 87103.)

"Income" is broadly defined at Section 82030(a) to include all forms of payment received by a public official, "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, ...", and also must be reported on an official's Form 700. This broad definition begins from a premise that, subject to exceptions stated in subdivision (b), any payment of money, goods, or services, is "income." Thus, as a general rule, any person or organization that has made any payment to a public official of \$500 in the past 12 months is a source of income to that official.

Section 82028(a) defines a "gift" 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.

Thus, a discount is a gift, unless the discount is made in the regular course of business to members of the public without regard to official status.

As stated in the Commission opinion, *In re Russell* (1975) 1 FPPC Ops. 191:

[M]any 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 [that] are made available to members of the public without regard to their official status.

The Commission further determined that:

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 accordance with the *Russel* Opinion, we have previously considered two factors to ascertain whether or not there was a gift. The first factor is whether the payment was publicized, and the second factor is the determination of whether the selection method unfairly benefited public officials. (See *Lum* Advice Letter, No. A-98-147.)

In this case, you are not being paid to be on the show, and you anticipate paying for all components of your project, from design to construction. To the extent that you are paying for all costs of the project and merely appearing on the show, your appearance does not constitute income or a gift under the Act. Nonetheless, it is your understanding that as a matter of practice HGTV regularly reserves \$10,000 for all participants on the show to ensure production can be completed in the event of unanticipated costs. In the event that HGTV makes a payment for unanticipated costs necessary to complete your project and production of the show, the determinative issue is whether such payment would constitute income or a gift under the Act.

In this regard, you state that your partner initiated the process in response to a Facebook advertisement by submitting a brief description of your home and potential projects. You were subsequently offered the opportunity to appear on the show after a Zoom interview. The opportunity to participate in the home improvement television show was properly publicized on a widely used social media platform, and the selection method, which involved your partner, rather than you, submitting a description of your home and potential projects and a subsequent interview, did not unfairly benefit public officials. There is nothing in the facts suggesting that your status as a public official had any relevance in the process. Based on the facts provided, in the event that HGTV covers an unanticipated cost necessary to complete production from the \$10,000 it has set

aside for such expenses, the payment by HGTV would constitute a discount made in the regular course of its business and the payment is neither income nor a gift under the Act.<sup>2</sup>

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

Sincerely,

Dave Bainbridge  
General Counsel

By: Zachary W. Norton  
Senior Counsel, Legal Division

ZWN:dkv

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<sup>2</sup> You have not indicated what amount, if any, may be offered to you, as you are not in a position to know what, if any cost overruns may occur during the project. To the extent the overage amount exceeds the \$10,000 that is typically reserved for this purpose you should seek additional advice.