

April 15, 1977

Carl Schnetz  
Administrative Assistant  
Assemblyman Eugene Chappie's Office  
State Capitol  
Sacramento, California 95814

A-77-350

Dear Mr. Schnetz:

Thank you for your recent letter in which you ask about the reporting requirements for the following situation:

Approximately 10 to 15 persons representing employers of lobbyists (business and labor organizations) are paying for bus transportation from Sacramento to the Auburn Dam for an informational tour. This tour is to be followed by dinner at the Monte Verde Inn, the dinner to be paid for by the above individuals. Participating in the tour will be lobbyist employers and lobbyists as well as members of the legislature.

You also asked whether or not the Spellman Opinion, 1 FPPC 16, applies to your situation. The Spellman Opinion is distinguishable since Spellman's transportation expense was paid for by the state, not by the lobbyist employer (Pacific Gas & Electric) and thus was not reportable by either the lobbyist employer or Spellman. The only expense incurred by P.G.&E. was for the tour at the nuclear power plant. The tour was considered informational material by the Commission and thus not reportable by Spellman.

In your situation, the legislators will be provided transportation from Sacramento to the dam by lobbyist employers, an expenditure clearly reportable by lobbyist employers and reportable by the legislators if the cost is \$25 or more. If at the dam, some of the contractors make an expenditure for a tour, such an expenditure probably would not be reportable by the contractors (assuming they are not lobbyist employers) or by the legislators

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since the expenditure could be considered an expenditure for informational material.

The reporting requirements are as follows: If any person is required to file a Statement of Economic Interests, that person must report any gifts from a single source of a group of persons if the gifts total \$25 or more during the previous year. (Government Code Section 87207(a)(1)) Thus, if the transportation and dinner total \$25 or more, the expenses will be reportable as a gift from all of the above persons. Further, any additional gifts from this group must be added to the above costs to determine whether or not the \$25 threshold has been met for the reporting year. The official must report the name and address and a general description of the business activity of the source of the income and the date, description and amount of the gift. This report will be due March 1, 1978, and is reviewed by the Commission.

An employer of a lobbyist must disclose expenditures of \$25 or more by listing the name and address of the payee and the names of individuals who are the beneficiaries along with the amount and description of the expenditure. These reports are due monthly and are filed with the Secretary of State's office.

Any lobbyist who pays for this gift must report on his lobbyist report the required information. However, each lobbyist is subject to the prohibitions of Government Code Section 86203 which prohibits the lobbyist from making or arranging for any gift of more than \$10 per month per official. The Commission has indicated that it intends to enforce strictly the \$10 prohibition. Thus, the lobbyist may not make the arrangements for the trip. If the lobbyist is going on the trip, there may be questions about his involvement in its arrangement. As I indicated to you on the phone, it would create fewer problems under the Act if the lobbyists do not go.

I hope that the above has been of some assistance to you. Please feel free to call me if you have any further questions regarding this matter.

Sincerely,

Robert M. Stern  
General Counsel

RMS:nc

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STATE CAPITOL  
SACRAMENTO, CALIFORNIA 95814  
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DISTRICT OFFICE  
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YUBA CITY, CALIFORNIA

DISTRICT OFFICE MAILING ADDRESS:  
P. O. BOX X, YUBA CITY 95991  
PHONE: 673-2201

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# Assembly California Legislature

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EUGENE A. CHAPPIE

MEMBER OF THE ASSEMBLY, THIRD DISTRICT



REPUBLICAN CAUCUS CHAIRMAN

77350

March 24, 1977

Mr. Robert Stern  
Fair Political Practices Commission  
1100 K Street Building  
Sacramento, California 95814

Dear Mr. Stern:

Pursuant to our conversation this date, could you please verify for me the reporting procedures as per the Auburn Dam trip.

As I stated, approximately 10 to 15 principals of certain groups, businesses or labor organizations will be paying for bus transportation to the Auburn Dam for an informational tour. The tour will be followed by dinner at the Monte Verde Inn near Foresthill. This will also be paid for by the aforementioned principals.

Those persons on the tour will include either principals or lobbyists, plus Members of the Legislature.

Thank you for your assistance.

Sincerely,

Karl J. Schnetz  
Administrative Assistant

KJS:dd



# Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance/Administration • • • Executive/Legal • • • Enforcement • • • Conflict of Interest  
(916) 322-5660 322-5901 322-6441 322-6444

December 6, 1977

*A-77-497*

Mr. William R. Attwater  
Chief Counsel  
State Water Resources  
Control Board  
Post Office Box 100  
Sacramento, California 95801

Dear Mr. Attwater:

This is in response to your memorandum to Delbert Spurlock dated October 14, 1977, requesting informal advice with respect to whether members of several California Regional Water Quality Control Boards must report the receipt of tours of certain California water supply systems.

As outlined in your memorandum, the facts are as follows: The Metropolitan Water District, at its own expense, conducts tours of the Colorado River Aqueduct and the California Aqueduct. The tours include an inspection of the facilities, transportation to and from the facilities, and meals and lodging. The value of the tour to the individual participant clearly exceeds \$25 and in some cases exceeds \$250. Specifically, we are asked to determine whether the receipt of such a tour constitutes income as defined in the Political Reform Act (and the Conflict of Interest Code of the State Water Resources Control Board), and therefore must be reported on the Regional Board members' statements of economic interests.

Government Code §82030(b)<sup>1/</sup>, which is incorporated by reference in the Water Resources Board's Code, provides in relevant part that:

... Income also does not include:

... (2) Salary and reimbursement for expenses or per diem received from a state or local government agency....

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

Metropolitan Water District is a "local government agency" as defined in §82041.

Initially, we observe that §82030(b)(2) excludes reimbursement for expenses from the definition of income even if the reimbursement is provided by a public agency other than the official's employer. Thus, if the tours are "reimbursement for expenses", they will not constitute reportable income to the members of the Regional Water Quality Control Board despite the fact that they were provided by Metropolitan Water District.

However, the tours could be considered to be "gifts" and not "reimbursement for expenses". If the tours constitute "gifts", they must be reported as income pursuant to the §82030(a) definition of income. We believe that the tours in the instant case are best characterized as reimbursement for expenses. We note that the tours in question are of water related facilities and that the officials are performing official duties while on such tours. Moreover, we think it is significant that the parties involved are both public agencies concerned with the administration of water facilities in California. Accordingly, we conclude that the tours are reimbursements for expenses from a state or local government agency and, pursuant to the exemption contained in §82030(b)(2), need not be reported.

If I can be of further assistance in this or any other case, please contact me.

Sincerely,



Kenneth W. Goshorn  
Research Specialist III  
Conflicts of Interest Division

KWG:glb

# Memorandum

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K

Mr. Delbert Spurlock, Chief  
Conflict of Interest Division  
Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95814

Date : OCT 14 1977

From : STATE WATER RESOURCES CONTROL BOARD

Subject: Request for Internal Opinion

OCT 14 1977

The Metropolitan Water District of Southern California (MWD) regularly conducts tours of several major water supply systems in the State. These are the Colorado River Aqueduct and the California Aqueduct. Members of several California Regional Water Quality Control Boards have been invited to participate in one, or both, of these tours. Those invited are selected either by the MWD itself or by one of its member agencies. MWD and all of its members are local government agencies as defined in Government Code Section 82041. Some of the member agencies (e.g., Chino Basin Municipal Water District) treat wastewater as well as provide water supplies and, in their capacity as wastewater treatment agencies, must obtain waste discharge permits pursuant to Division 7 of the Water Code from one of the Regional Water Quality Control Boards.

In accordance with the State Water Resources Control Board's Conflict of Interest Code, Regional Board members are in the broadest disclosure category. They must disclose "all investments, interests in real property...and income..."

I would like your opinion regarding whether the receipt of such a tour, as further described below, constitutes income as defined in the Political Reform Act and whether it must be reported on Regional Board members' statements of economic interest.

The tours in question are described in the attached brochures prepared by MWD. The value of the Colorado River Aqueduct tour was estimated by Mr. Ron Gastelum of MWD's legal staff at about \$100 per person. Mr. James Anderson, Executive Officer of the Santa Ana Regional Water Quality Control Board, estimates the value of the California Aqueduct tour to be \$450 to \$600 per person. As a part of each of the tours participants receive transportation by bus to points of interest along the water development being toured as well as meals and lodging. Participants also receive oral information and printed materials regarding the facilities being toured. The tours are put together by MWD's public relations department and are not offered, conducted or arranged by any lobbyist for MWD, although a lobbyist may, from time to time, be present on one of the tours.

OCT 14 1977.

When people from the southern part of the State take the State Water Project tour my understanding is that they are flown at MWD expense to the Sacramento Metropolitan Airport. Generally, people taking the Colorado River Aqueduct tour provide their own transportation to the starting point for the tour.

Thank you in advance for your prompt attention to this request.



William R. Attwater  
Chief Counsel

Attachments

cc: Mr. James W. Anderson, Executive Officer  
Santa Ana Regional Board

Mr. Leonard Burtman, Executive Officer  
San Diego Regional Board

# State of California



# Fair Political Practices Commission

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(916) 322-5662 322-5660 322-5901 322-6441 322-6444

Also filed: 82030

Advice to Legislators

82030

April 7, 1981

Assemblyman Norman Waters  
Assembly Water, Parks &  
Wildlife Committee  
State Capitol, Room 4130  
Sacramento, CA 95814

A-81-04-017

Dear Assemblyman Waters:

This letter is to confirm my telephone conversation of March 16, 1981, with Kip Wiley of your staff. Mr. Wiley asked if a tour provided to the members of the Assembly Water Parks & Wildlife Committee and the Senate Agriculture and Water Committee by the Metropolitan Water District, the Association of California Water Agencies and the Association of State Water Contractors must be reported on the Statement of Economic Interests. The tours include an inspection of the facilities, transportation to and from the facilities, meals and lodging.

Government Code Section 82028<sup>1/</sup> defines the word "gift" to mean:

... any payment to the extent that consideration of equal or greater value is not received....

(b) The term "gift" does not include:

(1) Informational material such as books, reports, pamphlets, calendars or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material";

...

In the Spellman opinion 1 FPPC Opinions 16 (No. 75-026, May 1, 1975) (enclosed) it was determined that a tour was not a gift because it comes within the exception for "informational material." Thus the actual inspection of facilities does not constitute a gift under Section 82028.

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<sup>1/</sup> All statutory references are to the Government Code.

Assemblyman Norman Waters  
April 7, 1981  
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Section 82030(b) provides:

"Income" also does not include:

. . .

(2) Salary and reimbursement for expenses or per diem received from a state or local government agency and reimbursement for travel expenses and per diem received from a bona fide educational, academic or charitable organization.

. . .

The Commission has determined that transportation, meals and lodging provided by a governmental agency as part of an informational tour of its facilities constitutes "reimbursement or per diem" from the governmental agency, and is not reportable as a gift.

Mr. Wiley has stated that each of the entities providing tours, including transportation, meals and lodging is a government agency as defined in Sections 82041 and 82049. It is clear that the Metropolitan Water District is a government agency. Therefore the tours provided by that agency are not reportable. If the other two agencies are in fact government agencies under the Political Reform Act (if, for example, they have conflict of interest codes), then the entire tours provided by those agencies are not reportable either. If, however, they are not such government agencies, only the actual tour of the facilities is excluded from reporting, and the transportation, meals and lodging provided in connection with the tours must be reported as gifts.

I hope that the above information has been helpful. Please feel free to call if you have any further questions regarding this matter.

Sincerely,



Alice Hughes  
Documents Examiner

AH:plh  
Enclosure

A-76-02-004

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the matter of:	)	
	)	
Opinion requested by	)	No. 75-161
Donald Burciaga, Treasurer	)	February 3, 1976
The Friends of Alex V. Garcia	)	
	)	

BY THE COMMISSION: We have been asked the following question by Donald Burciaga, Treasurer for The Friends of Alex V. Garcia:

As part of his campaign for election to the Los Angeles City Council from the 14th District, Alex V. Garcia mailed the voters a letter expressing his views on public issues ranging from education to transportation. A series of coupons from local merchants entitling the holders to discounts when purchasing goods or services were included with each letter. In addition, if a consumer wrote his name, address and telephone number on the coupon and presented it to a merchant in connection with a purchase, he became eligible to win a color television set. The addresses and telephone numbers on the completed coupons allowed members of candidate Garcia's campaign staff to make follow-up telephone calls and mailings. Candidate Garcia paid for the publication and distribution of the coupons and did not receive any monetary payments from either the participating merchants or the consumers in connection with their participation in the program.

Have the participating merchants made contributions to the candidate by permitting him to give the voters in his district coupons which provide discounts when presented in connection with the purchase of certain specified goods and services?

CONCLUSION

The merchants have not made contributions because they received full and adequate consideration in the form of free advertising, the prospect of volume sales and the possibility that customers will purchase other goods and services when redeeming their coupons. See Government Code Section 82015.

ANALYSIS

The analysis of whether the coupon program constitutes a contribution by the merchants to candidate Garcia begins with

Government Code Section 82015<sup>1/</sup> which includes within the definition of the term "contribution" the term "payment." Section 82044 defines "payment:"

"Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

Therefore, if candidate Garcia received anything of value from the merchants, the merchants may have made a contribution.

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

Section 82015 provides:

"'Contribution' means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

The term 'contribution' includes the purchase of tickets for events such as dinners, luncheons, rallies and similar fund raising events; the candidate's own money or property used on behalf of his candidacy; the granting of discounts or rebates not extended to the public generally or the granting of discounts or rebates by television and radio stations and newspapers not extended on an equal basis to all candidates for the same office; the payment of compensation by any person for the personal services or expenses of any other person if such services are rendered or expenses incurred on behalf of a candidate or committee without payment of full and adequate consideration.

The term 'contribution' further includes any transfer of anything of value received by a committee from another committee.

The term 'contribution' does not include amounts received pursuant to an enforceable promise to the extent such amounts have been previously reported as a contribution. However, the fact that such amounts have been received shall be indicated in the appropriate campaign statement.

Notwithstanding the foregoing definition of 'contribution,' the term does not include volunteer personal services or payments made by any individual for his own travel expenses if such payments are made voluntarily without any understanding or agreement that they shall be, directly or indirectly, repaid to him."

We can conceive of two theories whereby candidate Garcia could be said to have received something of value from the merchants' willingness to participate in the coupon program. First, the redeemed coupons may have provided his campaign committee with a list of names from which contributions, volunteers or votes could be solicited. Second, if the voters derived satisfaction from the use of the coupons, this may have created goodwill which could have influenced people to vote for candidate Garcia. These are the only things of value candidate Garcia received. He received no money directly or indirectly from either the merchants or the voters as a prerequisite to participation in the coupon program. Under these circumstances, candidate Garcia does receive something of value from the merchants and we conclude therefore that the merchants have made a payment within the meaning of Section 82044.

However, not all payments are contributions. Section 82015 states that if full and adequate consideration is provided by the recipient of the payment, the payment does not constitute a contribution. Full and adequate consideration means that each party receives benefits of approximately equal value. Chalmers v. Raras, 200 Cal.App.2d 682 (1962). See also opinion requested by Kenneth Cory, 1 FPPC Opinions 153 (No. 75-094-B, Oct. 1, 1975). This standard differs from the traditional contract standard of "consideration," "valuable consideration" or "good consideration." Horton v. Kyburz, 53 Cal.2d 59 (1959); Bank of California v. Connolly, 36 Cal.App.3d 350 (1973). The traditional contract standard does not require equality in the exchange but, rather, only a showing that each party receives at least some de minimis value. Kowal v. Day, 20 Cal.App.3d 720 (1971); Horton v. Kyburz, supra; In re Freeman's Estate, 238 Cal.App.2d 486 (1965).

In the present case, we believe that the merchants receive equal value from candidate Garcia, that is, full and adequate consideration in return for the benefit they bestow upon him. Each merchant has his name, his phone number and his business address distributed to approximately 25,000 homes. This mass advertising campaign provides the merchant with two potential benefits. First, the advertising campaign introduces the prospect of volume sales on the discounted item. Second, there is a possibility that the customer attracted by the discount will buy goods not advertised in the coupons.

Only a small percentage of coupons need be redeemed for the merchant to receive an economic benefit. Moreover, even if none of the coupons is used, the merchant will suffer no financial loss because he has not incurred any costs with respect to the production and distribution of the coupons. Under these circumstances, we think that candidate Garcia gives full and adequate consideration to the merchants in return for their agreement to sell goods and services to coupon holders at a discount.

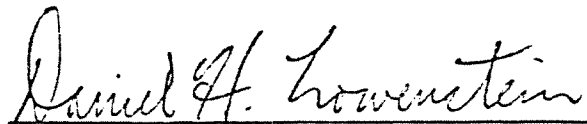
We emphasize that our opinion in this matter is limited to the facts before us. Our finding of full and adequate consideration is based on a unique combination of factors, including the lack of any out-of-pocket expenses by the merchants; the prospect that the merchants would realize profit from the venture; the amount of the advertising; and the fact that each merchant's establishment was advertised on a separate coupon, independent from any mention of other merchants or the candidate.

Accordingly, we conclude that the coupon program does not constitute a contribution by the merchants to candidate Garcia. This conclusion is without regard to whether a particular merchant is inspired by political motives to participate in the coupon program since he, like the other participating merchants, receives the benefits discussed above. It is immaterial that the merchant's "payment" might be made for a political purpose if full and adequate consideration is received.

We observe, however, that all expenditures incurred in connection with the publication and distribution of the newsletter and accompanying coupons must be reported by the candidate on his campaign statement. Section 84210. Furthermore, if the candidate is a state candidate (Section 82050), he must send a copy of the newsletter and coupon to the Commission under the mass mailing provisions of Section 84305.

Approved by the Commission on February 3, 1976.

Concurring: Brosnahan, Carpenter, Lowenstein, Miller and Waters.



Daniel H. Lowenstein  
Daniel H. Lowenstein  
Chairman