

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

78-01-111

In the Matter of:	)	
	)	
Opinion requested by:	)	No. 77-004
Merle J. Goddard, President	)	Jan. 11, 1978
of the Institute of	)	
Governmental Advocates	)	
	)	

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BY THE COMMISSION: We have been asked the following questions by Merle J. Goddard, President of the Institute of Governmental Advocates:

Merle Goddard is a registered lobbyist and is president of the Institute of Governmental Advocates ("Institute" or "IGA"). IGA is a California nonprofit corporation whose members are engaged in governmental advocacy. The organization has approximately 50 members, all of whom are or have been registered lobbyists pursuant to applicable provisions of the Political Reform Act ("Act"). Membership in IGA costs either \$2,500 for life members or \$1,000 for sustaining members. In addition, a lobbyist who represents the same organization as a member may become a nonvoting associate member of IGA for a fee of \$100.

While the Legislature is in session, IGA holds weekly luncheon meetings at one of several Sacramento restaurants. Members of IGA wish to know whether they may bring legislative officials as guests to the luncheon and pay for their food and beverage if the attendance of such officials occurs on a random and infrequent basis. The members of IGA will not advise or encourage other members to invite any specific individuals. The identity of a member's guest usually will not be known to other members until the guest actually attends the luncheon. Moreover, other members of IGA will not participate in the decision concerning whether to pay for a guest's luncheon. That decision will be left solely to the member who acts as host. We are asked to assume that one meal costs less than \$10 but that two lunches would cost \$10 or more.

Based on these facts, Mr. Goddard has asked the following questions:

(1) May Mr. Goddard pay for the lunch of a legislative official who attends an IGA luncheon if a different lobbyist has paid for the official's meal at another IGA luncheon held during the same calendar month?

(2) Would the response to question (1) differ if Mr. Goddard did not attend the other IGA luncheon at which the official received a gift of food and beverage?

(3) Would the responses to questions (1) and (2) differ if the official's host at the preceding IGA luncheon was an IGA member who is not a "lobbyist" as defined in Government Code Section 82039 and the regulations promulgated thereunder?

(4) Assume the following facts: Mr. Goddard has made a gift of food and beverage to a legislative official that is unrelated to any IGA function; the legislative official attends an IGA luncheon during the same calendar month as the guest of another lobbyist; Mr. Goddard also attends the luncheon; and the total cost of the two meals exceeds \$10. Has Mr. Goddard violated Government Code Section 86203? If so, may he cure the violation by leaving the luncheon?

#### CONCLUSION

(1) Based on the facts stated above, the members of IGA have not participated in an "arrangement" to make a gift to an official who attends an IGA luncheon. Consequently, Mr. Goddard has not violated Government Code Section 86203 if he pays for the lunch of a legislative official who attends an IGA luncheon if a different lobbyist has paid for the official's meal at another IGA luncheon held during the same calendar month. Because of our response to Mr. Goddard's first question, we do not reach the other questions he has posed.

Our conclusion addresses only random and occasional encounters between lobbyists and officials and does not address the restrictions that would be applicable if the facts demonstrated either an explicit or implicit agreement or understanding among members of IGA to make gifts to an official totaling more than \$10 in a month.

ANALYSIS

(1) Merle Goddard is a "lobbyist" as defined in Government Code Section 82039.<sup>1/</sup> By virtue of this status it is unlawful for him to make, act as an agent or intermediary in the making, or arrange for the making of certain gifts aggregating more than \$10 in a calendar month. Section 86203. It also is unlawful for any person knowingly to receive gifts which are prohibited by Section 86203. Section 86204. For purposes of these sections, "gift" means "a gift made directly or indirectly to a state candidate, an elected state officer, legislative official or an agency official." Section 86201.

Mr. Goddard has posed questions that refer only to an unnamed legislative official.<sup>2/</sup> However, because the prohibitions in Section 86203 apply equally to state candidates (Section 82050), elected state officers (Section 82021), and agency officials (Section 82004), as well as to legislative officials, the conclusions set forth herein will be equally applicable if any such person attends an IGA luncheon.<sup>3/</sup>

Initially, we observe that Mr. Goddard's questions address a traditional area of concern to lobbyists -- the ability to purchase food and beverage for government officials. Before the Act took effect, influential lobbyists commonly spent thousands of dollars to entertain government officials. Legislators and certain other public officials had open and continuing invitations to weekly luncheons that were paid for entirely by lobbyists. The Act was adopted, in part, for the purpose of eliminating such largess so that a lobbyist would succeed or fail on the merits of his position and the persuasiveness of his arguments, rather than on the basis of the financial resources at his disposal. Thus, a limit was

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

<sup>2/</sup> Section 82038 defines "legislative official" to mean "any employee or consultant of the Legislature whose duties are not solely secretarial, clerical or manual."

<sup>3/</sup> When applying these conclusions to agency officials, it must be remembered that the prohibition applies only to officials of agencies which the lobbyist actually influences or attempts to influence. 2 Cal. Adm. Code Section 18600.

placed on gifts from a lobbyist to an official so that lobbyists would not gain easier access to officials solely by reason of their ability to purchase gifts.

Despite the enactment of the prohibition, some lobbyists have attempted to formulate arrangements which effectively would circumvent the \$10 restriction. For example, Charles L. Smithers and Dennis Kavanagh submitted opinion requests concerning four lobbyists who wished to sponsor weekly dinners for members of the State Legislature. Each dinner would cost \$10 or less per person. Under the facts they posed, one lobbyist would sponsor a dinner during the first week of the month, a second would sponsor a similar dinner during the second week, a third lobbyist would pay for the third dinner and a fourth would purchase the final dinner. All lobbyists would attend each dinner but each lobbyist would pay the entire cost of only one dinner each month.

We consolidated the two requests and issued an opinion holding that although each lobbyist would directly make a gift of only \$10 per month to a legislator, he also would have arranged for gifts in excess of that amount by participating in the weekly dinners. Consequently, the Smithers-Kavanagh proposal was unlawful. We stated that any agreement or understanding between lobbyists, whether explicit or implicit, which results in gifts to an official totaling more than \$10 in a month constitutes mutual "arranging" and is prohibited by Section 86203. See Opinion requested by Charles L. Smithers and Dennis Kavanagh, 1 FPPC Opinions 42 (Nos. 75-028/75-030, July 2, 1975). The same legal standard is applicable to the instant case. Accordingly, Mr. Goddard will have arranged for the making of an unlawful gift if the facts show that he has participated in any agreement or understanding, whether explicit or implicit, with members of IGA that results in gifts to a legislative official totaling more than \$10 in a month.

The facts presented by Mr. Goddard do not demonstrate the existence of an explicit agreement to make prohibited gifts to legislative officials. Consequently, we must determine whether the facts of this case demonstrate an "arrangement" by virtue of an implicit agreement or understanding. We have not previously considered what evidence is sufficient to support a finding that such an implicit agreement between lobbyists exists. We have concluded, however, in the context of campaign disclosure, that there is an "implicit agreement"

to accomplish a common political goal between a corporate parent and its wholly owned subsidiary and a majority shareholder and his controlled corporation. Opinions requested by Harry H. Kahn, 2 FPPC Opinions 151 (No. 75-185, Nov. 3, 1976); and Thomas Lumsdon, 2 FPPC Opinions 140 (No. 75-205, Sept. 7, 1976). Again, there was no evidence of an express arrangement between the subsidiary and the parent or between the controlled corporation and its majority shareholder to make contributions to certain recipients. Nevertheless, pursuant to our duty to construe the Act liberally to accomplish its purposes, Section 81003, we held that the existence of an "implicit agreement" will be presumed because of the structure and functioning of the corporate entities.

Similarly, in the instant case, approximately 50 lobbyists have voluntarily joined together to form IGA. The members have certain common goals as lobbyists and share a common interest in enhancing their prospects for access to elected officials. Functioning through the entity they have created, members have chosen to sponsor weekly luncheons. Under these circumstances, when officials attend IGA luncheons we believe it is appropriate to presume the existence of an implicit agreement to make gifts to those officials unless the course of conduct and other circumstances are sufficient to negate the existence of such an agreement.

In the questions posed by Mr. Goddard, certain facts tend to negate the existence of the requisite agreement. For example, we have been informed by Mr. Goddard that the attendance of officials at the IGA luncheons has been random and infrequent. Moreover, an IGA member who invites an official does so without consultation with other members and the identity of a members' guest usually will not be known until the guest actually attends the function.

Although the instant situation presents a close case, we conclude that the random and infrequent attendance by officials and the lack of members' knowledge of another member's guest demonstrate the lack of an implicit agreement or understanding among IGA members to make gifts to an official totaling more than \$10 in a month. Consequently, Mr. Goddard has not violated Section 86203 if he pays for the lunch of a legislative official who attends an IGA luncheon and a different lobbyist has paid for the official's meal at another IGA luncheon held during the same calendar month.

We emphasize that this opinion does not address the situation that would exist if officials frequently attended

IGA luncheons. If such altered circumstances existed, each lobbyist would know there was a high likelihood that IGA members would purchase lunches aggregating more than \$10 for particular officials. Thus, the existence of an implied agreement could not be rebutted.

(2), (3) and (4) Because of our response to Mr. Goddard's first question, we do not reach the other questions he has posed.

Approved by the Commission on January 11, 1978.  
Concurring: Lapan, Lowenstein, and Quinn. Commissioner McAndrews dissented. Commissioner Remcho was absent.

  
Daniel H. Lowenstein  
Daniel H. Lowenstein  
Chairman

Commissioner McAndrews dissenting:

I dissent from the majority opinion insofar as it holds that the facts of this case do not support a finding of an implicit agreement or understanding among members of IGA.

The majority opinion declares that when IGA members purchase meals for a legislative official at two IGA luncheons in one month, the existence of an implied agreement to make unlawful gifts will be presumed unless the course of conduct surrounding the gifts is sufficient to offset the presumption of such an agreement. Having set forth this appropriate standard, the majority then adds that random and infrequent attendance by officials, coupled with lack of knowledge as to guests actually in attendance, is sufficient to rebut the presumption. Consequently, the majority concludes, a legislative official may attend at least two IGA luncheons in a single month as the guest of different IGA members without violating the Act.


In my view, if a legislative official attends more than a single luncheon in a month, his attendance can no longer be characterized as infrequent or random. Additionally, the result supported by the majority flies in the face of

the policy considerations underlying Section 86203, as well as the express language of Sections 86201, 86203 and 86204.

The Act imposed a \$10 limit on gifts, instead of a flat prohibition, so that lobbyists would not violate the Act by making isolated and incidental payments that benefit legislative officials. That concept does not, however, encompass an ongoing activity that results in recurring benefits to the same official, such as the multiple luncheons contemplated by IGA. The actual questions posed by Mr. Goddard presuppose that the official's attendance will be more than random.

Completely apart from my disagreement with the majority's analysis, I believe the Commission has failed to supply guidance to Mr. Goddard and other members of IGA. In reaching its conclusion, the Commission neatly sidesteps Mr. Goddard's questions and grasps at vague explanations as to past conduct rather than approaching the issue prospectively. The questions were posed so that IGA members would have clear guidance under the Act for the multiplicity of situations and combinations of lobbyist hosts and official guests that may occur in the future. When issuing opinions, the Commission has a responsibility to set forth unambiguous, enforceable standards. Instead, we have issued an opinion which hinges on such undefined terms as "random," "infrequent," and "incidental." The differing possible interpretations of these terms was evident from the oral debate among the Commissioners. Moreover, the caveat in the last paragraph of the Commission opinion, which proclaims that we would reach a different result if officials "frequently attended IGA luncheons," surely will bewilder anyone seeking guidance from the Commission in this area.

Because the analysis underpinning the majority opinion is flawed, and because it furnishes virtually no guidance to the parties who requested the opinion, I respectfully dissent.

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Colleen McAndrews  
Commissioner