

State of California



Fair Political Practices Commission

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August 7, 1978

78-08-123

Honorable Alan Robbins
State Senator
State Capitol
Sacramento, CA 95814

Dear Senator Robbins:

You have asked us a number of questions based on the following facts: The Motion Picture Council is planning to issue a nontransferrable identification card to individual legislators. Through the cooperation of the Theatre Association of California and the owners of theatres who are members of that association, the identification card will entitle the legislator and guest to admission to the theatres owned by cooperating members of the association. The cost of admission will vary depending on the policy of the particular theatre owner, but in no case would the cost of admission be anything more than a nominal fee of less than one dollar. If the card is a reportable gift to the legislators, the Motion Picture Council has offered to do the work necessary to place a value on the card and provide the value to the recipients of the cards.

You would like to know first whether the card is a reportable gift and if so from whom is it a gift. The Political Reform Act, in Government Code Section 82028,^{1/} defines a gift as "any payment to the extent that full and adequate consideration is not received." Section 82044 defines payment so as to include the "rendering of money, property, services or anything else of value, whether tangible or intangible." Because the card entitles the holder to entrance to motion picture theatres throughout the state, it certainly is something of value. And because the card is provided at no cost to the holder and entitles the holder to admission at no or only a nominal cost, full and adequate consideration is not received for the card. Therefore, receipt of the card constitutes a gift.

^{1/} All further statutory references are to the Government Code unless otherwise stated.

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Gifts are considered to be income and must be reported if their value is \$25 or more and if they are not otherwise excluded by the Act's definition of income. Sections 82030, 87207. The card does not fall within any of the exceptions in the definition of income (Section 82030(b))^{2/} and, therefore, must be reported if the value exceeds \$25.

You have also asked how to report from whom the gift will be received. While in a technical sense, the gift will be received from the Motion Picture Council, the actual consideration represented by the card is being provided by the Theatre Association of California and the participating theatre owners. Therefore, legislators' statements of economic interests should disclose the Association and participating theatre owners as the donor of the gift. It would be permissible to attach a list of theatre owners as an addendum to the disclosure form. The form itself should disclose the Association and make a reference to the attached list. The list of theatre owners should also note that information concerning the admission policies of the various theatre owners is available from the Motion Picture Council and the Commission.

Lastly, you ask whether or not a legislator may, for reporting purposes, use the value set for the card by the Motion Picture Council. A filer is required to use reasonable diligence in providing the information contained in a statement of economic interests including the value of gifts. Section 81004. A filer would be using reasonable diligence if, in good faith, he uses a value computed by a person he knows has the expertise and resources to objectively compute that value. The Motion Picture Council would appear to be an organization which is capable of objectively computing the value of the pass card. Therefore, the value set by the Council can be used for legislators' statements of economic interests. However, it should be pointed out that if the filer knows that the value placed on a gift by a third party is incorrect, he may not rely on the value.

As to the computation of the value of the card, you have stated that the Motion Picture Council desires to set a value based upon average amount of card usage. The Political Reform Act requires that gifts be valued at their estimated fair market value. Section 81011. In the Opinion Requested

^{2/} Gifts from certain relatives, gifts of information material and gifts which are not used and are returned to the donor or given to charity within 30 days of receipt are not considered income and are, therefore, not reportable. Section 82030(b).

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by William Hopkins, 3 FPPC Opinions 107 (No. 77-022, Dec. 8, 1977), the Commission considered the question of how to value entertainment passes which were not sold to the public and therefore had no easily ascertainable value. The opinion requires that the value be determined by computing the value based upon maximum reasonable use of the pass, and discounting that value by a percentage a vendor might discount the price of a pass from the price of multiple individual tickets in order to induce the general public to buy a pass. While average use of the card is certainly information to be taken into account in determining maximum reasonable use, under the Hopkins opinion, average use cannot be the sole determinant of value. Enclosed is a copy of the Hopkins opinion.

I hope this advice will prove helpful to you. If you have any further questions, please do not hesitate to call me. Thank you for your continuing interest in compliance with the provisions of the Political Reform Act.

Sincerely,

Lee C. Rosenthal
Chief
Legal Division

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Enclosure

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Senator
ALAN ROBBINS
Representing the
San Fernando Valley

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July 11, 1978

Lee Rosenthal, Esq.
Legal Division Director
Fair Political Practices Commission
1100 K. Street, P.O. Box 807
Sacramento, CA 95804

Re: Motion Picture Council

Dear Mr. Rosenthal:

I am writing in my capacity as Chairman of the Motion Picture Council, a State agency created pursuant to Senate Bill 1823, Chapter 1226, 1974. The Council is considering the annual issuance of identification cards to members of the Legislature. The cards contemplated would be non-transferable, and would contain either a photograph or signature identification of the legislator. It is anticipated that various theater chains in California would adopt individual chain policies with respect to courtesy admissions or nominal cost (60¢) admissions. The Theatre Association of California would cooperate with the Motion Picture Council in providing information to the Council and in coordinating admission policies of various theater owners and theater chains in California.

In this regard, I have the following questions:

1. Does the receipt of the card by a legislator constitute a reportable gift?
2. Presuming that the receipt of the card constitutes a reportable gift, do I correctly presume that the donor should be jointly reported as the Motion Picture Council and the Theatre Association of California?
3. Presuming that the Motion Picture Council in good faith establishes a value on the pass based upon the presumed average

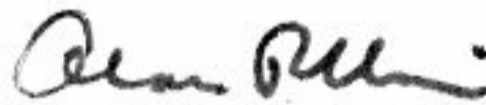
amount of pass usage, could a legislator then use that value as the reported value in filing his Proposition 9 statement?

It is intended that the Motion Picture Council in conjunction with the Theatre Association of California would maintain an updated file in its office at all times of the admission practices followed by various theater chains and individual theaters, so that anyone who wished to do so could verify the precise amount of theater availability pursuant to the identification card. This information would of course be furnished from the Motion Picture Council to the Fair Political Practices Commission.

Your assistance in procuring a written response to this letter within the next few weeks would be appreciated and would be helpful. This request for a response is a follow-up to our telephone conversation today.

My best regards.

Sincerely,



ALAN ROBBINS

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