

82044

State of California



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

January 18, 1980

Thomas P. Hansen
Rankin, Oneal, Center, Luckhardt,
Marlais, Lund & Hinshaw
Bank of the West Building, Suite 300
Two West Santa Clara Street
San Jose, CA 95113

A 80-142

Re: Opinion Request
No. 80-001

Dear Mr. Hansen:

Thank you for your letter of January 2, 1980, requesting a formal opinion with respect to the conflict of interest provisions of the Political Reform Act. Because your letter does not raise a substantial question involving interpretation of the Act, no formal opinion will be issued in response to it. I hope the following advice issued pursuant to Government Code Section 83114(b) will be of assistance to you. Before turning to the interpretive questions you have raised, I must advise you that the procedures for rendering an opinion or advice do not involve the Commission's making any determination of disputed facts. Adjudicatory decisions of the Commission are made only in connection with the enforcement provisions of the Act. Accordingly, the Commission cannot determine under either Government Code Sections 83114(a) or 83114(b) the reason for your client's failure to disclose.

With respect to your specific question, you have asked whether the following transaction involves the receipt of a disclosable gift or of disclosable income:

A designated city employee accepts two airplane tickets, lodging and food for a two day period for himself and his wife in connection with a bona fide employment application/interview by a prospective employer/interviewer which, among other things, involved viewing/inspecting by the designated employee of certain real property/business

Thomas P. Hansen
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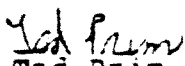
venture located "outside of the jurisdiction," but owned by the prospective employer/interviewer, who maintains his principal place of business within the jurisdiction.

The trip would be reportable as income. The Act, in brief, defines income as a "payment" received and specifically includes a reimbursement for expenses. "Payment" is defined as any "rendering of money, property, services or anything else of value, whether tangible or intangible." Government Code Section 82044. The expenses of the trip are obviously things of value and, therefore, income within the meaning of the Act. Under the Act, gifts are a variety of income but are reportable on a separate schedule. A gift is specifically defined as "any payment to the extent that consideration of equal or greater value is not received...." Government Code Section 82028. Assuming that the trip was undertaken in connection with a bona fide employment application, the expenses of the trip would not be reportable as gifts to your client. According to the facts as you have described them, the trip was undertaken as part of your client's active consideration of employment with a possible employer; under Section 82028, therefore, it would appear that there was sufficient quid pro quo for the expenses of the trip. This analysis would include the trip supplied to your client's wife if her assent to the conditions of employment were a factor in your client's decision about taking the job. Therefore, based on the information you have provided, your client should report the trip to him and his wife as income.

In closing, you should understand that my response is predicated on your description of the facts and not any independent finding of our own. Obviously, if the facts described are untrue or incomplete, the advice cannot be relied upon.

I trust this answers your question. If you wish to appeal the denial of your request for a formal opinion, you may do so pursuant to 2 Cal. Adm. Code Section 18321. If you have any further questions, please contact either me or Tom Sobel, Chief of the Legal Division.

Sincerely,


Ted Prim
Executive Director

TP:TMS:plh:1-6

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TELEPHONE: (408) 293-0463

January 2, 1980

Request No. 80 001

Date Received 1-4-80

Response Due 1-18-80

PROPOSED RESPONSE
DUE: 1-15-80

PROPOSED RESPONSE MUST
BE SENT TO COMMISSIONERS.

Mr. John Giansello
Political Reform Analyst
Fair Political Practices Commission
110 K Street
Sacramento, CA 95814

Re: John Eastus

Dear Mr. Giansello:

The undersigned represents Mr. John Eastus relative to making inquiry on his behalf to the Commission. You may recall that I briefly discussed this matter with you by telephone and you suggested that I write to your attention.

During the year 1978, Mr. Eastus was employed as the Assistant Director of Public Works for the City of San Jose and, as such, was a "designated employee" for purposes of filing financial disclosure statements under the Political Reform Act of 1974. In August of 1978, during his regular vacation period from his City employment, he and his wife traveled to Seattle, Washington, as is more specifically detailed in the Memorandum enclosed herewith dated October 15, 1979, and directed to the City Manager of the City of San Jose.

We seek the opinion of the Commission under Government Code Section 83114(a) regarding the necessity of disclosure under the Act, assuming the following factual set of circumstances:

Designated City employee accepts two airplane tickets, lodging and food for a two-day period for himself and his wife in connection with a bona fide employment application/interview by a prospective employer/interviewer which, among other things, involved viewing/inspecting by the "designated employee" of certain real property/business venture located "outside of the jurisdiction," but owned by the prospective employer/interviewer, who maintains his principal place of business within the jurisdiction.

Mr. John Giansello
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In the event that it is the tentative opinion of the Commission that such ought to be disclosed in a financial statement under the Act as either "gift" or income, we would respectfully request the opportunity to personally appear before the Commission or its designated hearing officer or representative for the purpose of seeking a ruling that

- (1) the circumstances as set forth did not compel disclosure under the Act and/or
- (2) if disclosure was required, Mr. Eastus' failure to do the same was neither culpable nor intentional.

Both I and my client stand ready to provide you with any additional information you might wish in responding to this request and are prepared to cooperate with you in resolving this matter.

Thank you for your past courtesy and we look forward to hearing from you in the near future.

Very truly yours,

Thomas P. Hansen
u. u.

THOMAS P. HANSEN

TPH/um

Enclosure

cc: Mr. John Eastus

CITY OF SAN JOSE -- MEMORANDUM

TO James A. Alloway, City Manager

FROM John E. Eastus

SUBJECT STATEMENT OF FACTS CONCERNING AUGUST 1978
TRIP TO SEATTLE

DATE October 15, 1979

APPROVED

DATE

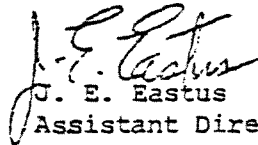
I have known Keith Wiggins, Civil Engineer and mobile home park developer, for approximately 20 years. Prior to August 1978, I considered Keith Wiggins a friend and fellow professional. Several years prior to August 1978, Keith Wiggins had asked me to go to work with him, with the ultimate goal of his retiring and my managing his business. I had regularly turned his offers down, expressing my wish to stay with the City and move up in the organization. Sometime about June or July of 1978, with Proposition 13 being passed and the fallout that came from that, plus the inability of the Administration and Council to communicate, I thought it might be a good time to investigate employment somewhere else.

I met with Keith Wiggins to discuss possible employment. After much discussion, it was determined that because of the necessity of having to do much traveling and since I would probably occasionally wish to take my wife along, she should see what she would have to contend with. It was proposed by Keith Wiggins that he fly us both to Seattle during my August vacation to look at the various locations of his business. My wife and I accepted, and we visited the Seattle and Prosser, Washington areas, looking at developments and ranch operations.

During my stay in Washington State, which consisted of approximately 48 hours, the City Council fired the then City Manager, Ted Tedesco. When Keith Wiggins found out, he told me he could not hire me as I had for several years told him I wanted to stay at the City and with the Manager leaving, there was a possibility of my moving up in the organization, and he didn't want me looking back over my shoulder wondering what would have happened if I had stayed. Considering the recent development relative to Mr. Tedesco, I felt that there might be opportunities available to me for career advancement in City Government and decided to continue with the City.

I volunteered this information to the District Attorney during an interview prior to the Grand Jury Hearing on the Alviso Mobile Home Park. I also volunteered this information to the Grand Jury and remain open to any questions concerning the matter which you may have.

The above is the full story surrounding my trip to Seattle. It was an integral part of a job interview following what I considered to be a bona fide job offer.


J. E. Eastus

Assistant Director of Public Works