

State of California

Also filed: 82030

Advice to Legislators



Fair Political Practices Commission

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82028
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^{1/} 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.

^{1/} All statutory references are to the Government Code.

Assemblyman Norman Waters
April 7, 1981
Page Two

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

8/10/77

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^{1/} 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.

^{1/}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.

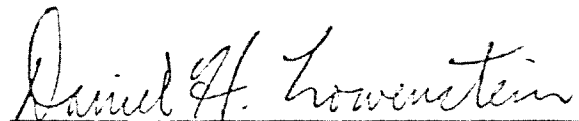
Only a small percentage of coupons need be redeemed for the merchant to receive an economic benefit. Moreover, even if none of the coupons is used, the merchant will suffer no financial loss because he has not incurred any costs with respect to the production and distribution of the coupons. Under these 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