

California Fair Political Practices Commission

February 19, 1986

Charles O. Lamoree
County Counsel
County of Solano
County Court House
Fairfield, CA 94533

Re: Your Request for Advice
Our File No. A-86-034

Dear Mr. Lamoree:

This is in response to your request for Formal Written Advice on behalf of the Solano County Supervisors and various County officials with respect to their responsibilities under the Political Reform Act (the "Act").^{1/}

FACTS

Solano County holds an annual County Fair, which is conducted on the County Fairgrounds. By contract, the Solano County Fair Association ("Association"), a nonprofit corporation, acts as the County's agent for the purposes of managing, operating and conducting the Fair. The Board of Supervisors approves the Association's annual budget and makes other decisions affecting the Association.

Each year, the Association distributes complimentary passes to members of the Board of Supervisors and other County officials. In 1985, the fair package sent to County Supervisors consisted of:

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Your letter made reference to a "Formal Opinion"; however, by telephone I have confirmed that you actually seek "Formal Written Advice," pursuant to Section 83114(b) and 2 Cal. Adm. Code Section 18329.

<u>Passes</u>	<u>Value</u>
6 season admission books (A season admission book allows admission to the fair for thirteen days and is valued at \$52.00.)	\$312.00
50 single day passes (A single day pass is valued at \$4.00.)	200.00
3 season general parking books (A season general parking book is valued at \$13.00.)	39.00
35 single general parking passes (A single general parking pass is valued at \$1.00.)	35.00
1 preferred parking book	26.00
25 single preferred parking passes (A single preferred parking pass is valued at \$2.00.)	50.00
40 lunch tickets (A lunch ticket is valued at \$4.15.)	166.00
	<hr/>
TOTAL FAIR MARKET VALUE	<u>\$828.00</u>

In 1985, the fair package sent to the County Counsel, County Clerk, Tax Collector, County Treasurer, County Administrator, Sheriff, Auditor-Controller, and other County officials consisted of:

2 season admission books	\$104.00
1 season general-parking book	13.00
2 lunches	8.30
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TOTAL FAIR MARKET VALUE	<u>\$125.30</u>

QUESTION

You wish to know whether the fair packages sent to County Supervisors and other County officials are reportable as gifts on their Statements of Economic Interests?

CONCLUSION

The fair package consisting of 2 season admission books, 1 season general parking book and 2 lunch tickets should be deemed as part of the County officials' compensation (a perquisite incident to the office) and not as a gift reportable under Section 87207(a). Part of the fair package given to County Supervisors (2 season admission books, 1 preferred parking book and 2 lunch tickets) should be deemed as compensation and the remainder of the fair package should be reportable as a gift under Section 87207(a).

ANALYSIS

The Act requires that receipt of a gift valued at \$50 or more during any reporting period shall be reported on a public official's Statement of Economic Interests ("SEI"). Section 87207(a)(1).

In the past the Commission has held that free tickets and passes received by city officials to events held at a municipal stadium, where the seats were reserved for the city's use as part of the stadium lease agreement, were not gifts to the official because the tickets came from the city pursuant to a formally-adopted policy and were merely part of the "compensation" for the official in the form of a "perk" of office. (See, Advice Letter to Los Angeles City Councilmember Hal Bernson (A-82-211), copy attached.) This presumes, however, that the tickets are for the official's personal use in a manner related to the duties of the office. On the other hand, the Commission has advised a State Senator^{2/} that movie tickets given to a legislator for distribution at the legislator's discretion will be construed as a gift to the legislator.

Based on the Commission's past advice we would categorize the free tickets and passes to the Solano County Fair as either compensation or gifts. Where the tickets and passes are for the public official's personal use in an oversight role, and are distributed in accordance with a formally-adopted policy, the tickets and passes shall be deemed to be part of the official's compensation from the County and, therefore, not a gift. Where the tickets and passes are intended for distribution to others at the public official's discretion, the tickets and passes shall be deemed to be a gift to the public official and reportable pursuant to Section 87207(a).

^{2/} Letter to Senator Alan Robbins (A-77-392), copy enclosed.

Furthermore, the donor (or "source") of a gift or gifts totaling \$250 or more in value during the preceding 12-month period is a source of a gift to the official within the meaning of Section 87103(e). This is relevant in determining whether the public official must disqualify himself from participating in a governmental decision which could have a reasonably foreseeable material financial effect on a source of a gift to the official (Section 87100, et seq.).

In applying this rule to the fair packages sent by the Association to County Supervisors and other County officials, the fair package consisting of 2 season admission books, 1 season general parking book and 2 lunches should be deemed as part of the official's compensation and not reportable as a gift.^{3/} The size of the package infers that it is for the official's personal use.

The fair package sent to County Supervisors, however, infers that a substantial part of it is to be distributed to others at the official's discretion. This inference is supported by your statement that "the practice of Board members receiving these passes is to make the passes available to members of the general public."

Rather than conclude that the entire fair package given to County Supervisors should be reportable as a gift, we believe that it is proper to take into account that part of the package is likely to be used by the County Supervisor for his or her personal use. Since we have already determined that the fair package given to other County officials would be deemed to be compensation and not a gift, we conclude that 2 of the 6 season admission books, the preferred parking book, and 2 of the 40 lunch tickets in the County Supervisor's fair package, should be deemed as compensation and that the remainder of the fair package (with a fair market value of \$689.70) should be reportable as a gift from the Association to the County Supervisor.^{4/} We reach this result because compensation for a public official does not constitute "income" within the meaning of the Act. Section 82030(b)(2). Since "income" includes gifts (Section 82030(a)), such compensation is not a gift either and therefore not reportable. Consequently, the portion

^{3/} This assumes that the County Fair Association has formally adopted a policy of distributing these fair packages to appropriate officials in the County government for their use in discharging their respective oversight responsibilities.

^{4/} Id.

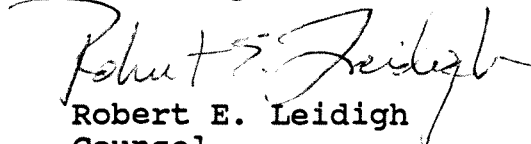
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of the fair package over and above that considered as compensation is all that is reportable as a gift.

Since the amount of the gift would exceed \$250 in a 12 month period, the Association would be a source of a gift (see discussion supra) to each Supervisor. However, decisions by the supervisors affecting the Association (a county agency) would appear to be exempt from disqualification as decisions affecting the "public generally." See Advice letter to William Taylor, No. A-78-086 (copy enclosed). Hence, disqualification will not be triggered in normal circumstances with respect to decisions affecting the Fair Association.

I trust that this letter adequately responds to your request for Formal Written Advice. If you have any questions, I may be reached at (916) 322-5901.

Sincerely,



Robert E. Leidigh
Counsel
Legal Division

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Enclosure

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February 5, 1986

Robert Leidigh
Staff Counsel
Fair Political Practices Commission
1100 "K" Street
Sacramento, CA 94814

Dear Mr. Leidigh:

Subject: Opinion Request Relative to Reporting Fair Tickets
By Board of Supervisor

With respect to our telephone conversation, I hereby amend my previous request to you as follows:


1. That as opposed to a decision of the Fair Political Practices Commission, I instead request formal written advice on the subject contained in my previous letter. This request is made pursuant to Government Code Section 83114(b).
2. The Solano County Fair Board is, in my opinion, a public agency and its members public officials. The agency does have a conflict of interest code and the board members file annual reports.
3. The tickets distributed by the Board of Supervisors beyond their individual needs for themselves and their spouses, are usually related to specific Fair activities. The Solano County Fair has a separate and different theme for each day of the Fair. For example, there is a "day" for each city in the county, and days which also honor specific organizations or groups (such as "Military Day," "Black American Day," "Filipino-American Day," etc.). The purpose of the additional tickets is to target those groups so that participation by community leaders in each of the different areas is enhanced. Thus, the supervisors seek to ensure that individuals from the cities or organizations within their supervisorial districts are well represented at the individual theme days and, thus, the tickets support those activities.

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4. It is my understanding that should a reportable interest be determined through formal written advice, that the returns of the public officials involved may be amended pursuant to Government Code §81004.5, and that the normal practice in such instances is not to subject those amending their returns to fines or penalties.

If you have any further questions concerning this matter, please do not hesitate to call on me.

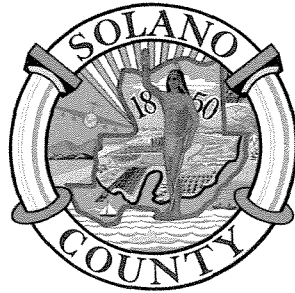
Very truly yours,



CHARLES O. LAMOREE
County Counsel

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January 16, 1986

Robert Leidigh
Fair Political Practices Commission
Legal Division
P. O. Box 807
Sacramento, CA 95804

Dear Mr. Leidigh:

I would like to request a formal opinion, as provided for in Government Code Section 83114 and 2 California Administrative Code Section 18320, regarding the duty of the Solano County Supervisors and various County officials to report as gifts on their Statements of Economic Interest, filed pursuant to Government Code Sections 82030(a) and 87207(a), the receipt of complimentary tickets to the County Fair.

Solano County holds an annual County Fair, which is conducted on the County fairgrounds. By contract, the Solano County Fair Association (Association), a non-profit corporation, acts as the County's agent for the purpose of managing, operating and conducting the Fair. Each member of the County Board of Supervisors (Board) appoints four directors to the Association from his or her district. The Board approves the Association's annual budget and the Association may not enter into a contract for a term exceeding one year; any such contract must be between the County Board of Supervisors and the contracting party. All permanent capital improvements must be made in the manner provided by law. The Board approves the Association's policy of reimbursement for travel expenses and the County provides the Fair, as available and at cost, the services of County personnel. Proceeds received by the Association are placed in the County Fair Fund in the County Treasury and are expended for support of the Fair.

Each year, the Association distributes complimentary passes to County Board members and to County officials. In 1985, the fair package sent to Board members consisted of:

<u>Passes</u>	<u>Value</u>
6 season admission books (A season admission book allows admission to the fair for thirteen days and is valued at \$52.00.)	\$312.00
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The practice of Board members receiving these passes is to make the passes available to members of the general public. The practice of other County officials is to make the passes available to other persons within their department.

In attempting to resolve the question of whether these passes must be reported as income, this office has reviewed Fair Political Practices Commission Opinions numbered 77-003 (requested by Peter G. Stone, City Attorney of San Jose) and 77-022 (requested by William P.

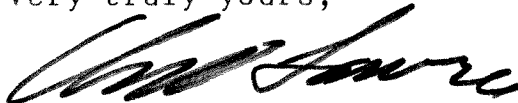
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Hopkins, City Attorney of Anaheim). Although the Hopkins opinion appears more analogous to our situation, we question its applicability because of the significant distinction that, in this case, the passes are to a County event occurring on the County-owned fairgrounds. By contrast, various private functions, e.g. dog shows, antique shows, gun shows, and art exhibits, are held throughout the year at the County fairgrounds. However, County Board members and officials receive no free tickets to any of these programs because the events are unrelated to the County Fair and are privately sponsored.

Furthermore, we question the appropriateness of the Hopkins analysis because attendance by the Board of Supervisors at the County Fair and luncheon appears to be part and parcel of their normal duties as Supervisors. The Board members are elected representatives responsible to the public for managing the fairgrounds and holding the County Fair, a civic event of great social, economic and educational benefit to the County as a whole. Attendance by Board members appears indistinguishable from their attendance at other public events of County-wide significance, such as the dedication or opening, with ceremonial luncheon, of a building, bridge, dam or other public facility.

Should you have any questions about this matter, please contact me at the above address or by telephone at (707) 429-6491. Thank you very much for your consideration.

Very truly yours,



CHARLES O. LAMOREE
County Counsel

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