



# California Fair Political Practices Commission

February 11, 1988

Eugene B. Baird  
Deputy City Attorney  
City of Vallejo  
555 Santa Clara St.  
PO Box 3068  
Vallejo, CA 94590

Re: Your Request for Advice  
Our File No. I-88-045

Dear Mr. Baird:

This is in response to your letter confirming our telephone conversation regarding the reporting of gifts pursuant to the provisions of the Political Reform Act (the "Act").<sup>1/</sup> Because your request is more of a general inquiry than a request for advice as to a specific action pending before the board of supervisors, we treat your request as one for informal assistance.<sup>2/</sup>

## QUESTION

What is the appropriate valuation, for disclosure purposes, for a gift of a nontransferable annual theater (cinema) pass given to a public official?

## CONCLUSION

For disclosure purposes, the value of the pass is the fair market value of the actual use by the official and any guests.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

<sup>2/</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

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DISCUSSION

As you noted in our telephone conversation on this question, the Commission's advice regarding valuation of annual passes has undergone a change in the last few years. Specifically, the adoption of Regulation 18726.3 (copy enclosed) has modified the rule previously established for valuation of such gifts in In re Hopkins (1977) 3 FPPC Ops. 107 (copy enclosed).

Regulation 18726.3 provides the following regarding valuation of gift passes for purposes of disclosure:

(a) For purposes of disclosure. The value shall be the fair market value of the actual use of the pass or tickets by the official, including guests accompanying the official, plus the fair market value of any possible use by any person or persons to whom the official transfers the privilege of use of the pass or tickets.

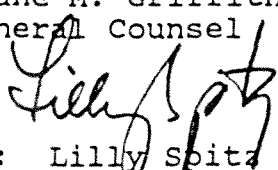
In presenting the language of Regulation 18726.3 to the Commission for adoption, the Commission staff noted that the proposed language represented a departure from the holding in Hopkins, supra. "This (Hopkins) ruling has been greatly criticized over the years as creating absurd and harsh results. The staff recommends the changes proposed by Section 18726.3 as a reasonable approach to the treatment of such gifts." (See Final Statement of Reasons, 2 Cal. Adm. Code Section 18726.3, copy enclosed.)

Thus, for purposes of reporting gift passes, a public official need no longer abide by the guidelines discussed in the Hopkins opinion, supra. For a nontransferable pass, reporting the fair market value of actual use by the official and any guests, totaling \$50 or more, will comply with disclosure requirements.

I trust this clarifies any confusion regarding this issue. If I can be of assistance in the future, please don't hesitate to contact me.

Sincerely,

Diane M. Griffiths  
General Counsel

  
By: Lilly Spitz  
Counsel, Legal Division

DMG:LS:plh



**CITY OF VALLEJO**

JOHN M. POWERS  
CITY ATTORNEY

JAN 23 1 59 PM '88

January 21, 1988

Ms. Lily Spitz, Staff Counsel  
Fair Political Practices Commission  
428 "J" St., Suite 800  
Sacramento, CA 95814

RE: FPPC Opinion No. 77-022 and  
Regulation 18726.7 (2 Cal. Admin.  
Code), effective 7-22-87

Dear Ms. Spitz:

This is to confirm our telephone conversation on the above items in relation to the valuation of an annual theater (cinema) pass given to a public official. Value is to be determined for disclosure purposes (Form 730), not involving disqualification from participation in a decision. The pass is non-transferable, and permits the official and a maximum of three guests to attend any of twenty or more theater sites affiliated with a large chain in Northern California (some new release films excepted). The pass does not confer free entry to any movie. Rather, an "employee benefit fee" of \$1.50 per attendee (25-30% of ticket price) must be tendered.

I mentioned that our City Attorney had, prior to the effective date of the above-noted regulation, been referred to Opinion No. 77-022 of the Fair Political Practices Commission ("FPPC") on the valuation issue. He understood then that Opinion No. 77-022 required that the pass recipient report its value based on his or her "potential use" for the year of issuance, unless, of course, the pass were returned. His advice to the public official was that the value of the pass would certainly exceed \$50.00, and thus be reportable as a gift on the official's disclosure statement (if not returned), regardless of the official's actual use, if any.

I next referred to FPPC Reg. 18726.3, which prescribes a quite different approach for assigning a value to such a pass. Subsection (a) states that, for disclosure purposes, the pass' value shall be the fair market value of the actual use by the official and any guests, plus the fair market value of the possible use by any transferee of the pass. This approach would permit an official to utilize the pass for himself and guests up to the \$50.00 value point, without incurring a reportable gift

Subject: FPPC Opinion No. 77-022 and Regulation  
18726.7 (2 Cal. Admin. Code),  
effective 7-22-87

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(again, the passes are not transferable). At that point the official could decide whether or not to make any additional use of the pass, knowing that such incremental usage would require the official to report the pass as a gift on his or her disclosure statement. I believe you were in agreement with this analysis.


Since the calculation of a pass' value under the regulation is obviously inconsistent with what was understood to be the method set forth in the 1977 Opinion, I asked whether the regulation specifically superseded the Opinion. After checking with other FPPC staff, you called me back and confirmed that the 1987 regulation was intended to resolve complaints concerning the 1977 Opinion, and therefore was adopted in order to revise the valuation approach set forth therein.

I have reached the point of advising the public official who has requested assistance along the lines set forth. Before doing so, however, I would appreciate further input from you, particularly if I have overlooked some other regulation which might bear on this interesting issue.

Thank you very much for your assistance with this matter.

Very truly yours,

JOHN M. POWERS  
City Attorney

  
EUGENE B. BAIRD  
Deputy City Attorney

EBB/bls  
cc: John M. Powers,  
City Attorney

BlySpitz



# California Fair Political Practices Commission

January 27, 1988

Eugene B. Baird  
Deputy City Attorney  
P.O. Box 3068  
Vallejo, CA 94590

Re: 88-045

Dear Mr. Baird:

Your letter requesting advice under the Political Reform Act was received on January 25, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Lilly Spitz, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths  
General Counsel

DMG:plh