



California Fair Political Practices Commission

May 30, 1989

Robert E. Leidigh
Olson, Connelly, Hagel and Fong
300 Capitol Mall, Suite 350
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-89-248

Dear Mr. Leidigh:

This is in response to your letter requesting advice on behalf of the Nature Conservancy concerning their duties under the Political Reform Act (the "Act").^{1/} Because your letter deals with a variety of issues, we have separated the letter into two requests. This response pertains to your question regarding In re Spellman, 1 FPCC Ops. 16 (copy enclosed).^{2/}

QUESTIONS

1. Is an informational tour of the Nature Conservancy's preserve on Santa Cruz Island and transportation to and from the island provided to a public official a gift to the official?
2. Was Regulation 18228 adopted to supersede the 1975 Commission opinion In re Spellman, supra?

CONCLUSIONS

1. The value of an informational tour of Santa Cruz Island provided to a public official and the transportation to and from the island, where no other means of reaching the island is available, are excluded from the definition of a "gift" set forth in the Act because it is intangible informational material.

^{1/} 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.

^{2/} Your remaining question concerning the relationship between the definitions in Section 82028 and Section 82030 has been withdrawn pursuant to your telephone request of May 23, 1989.

2. Regulation 18228 was not intended to supersede In re Spellman. In re Spellman and advice letters based on the opinion are still valid precedent.

FACTS

The Nature Conservancy (the "conservancy") is a nonprofit, tax exempt corporation under Internal Revenue Code Section 501(c)(3). The conservancy was formed to acquire environmentally sensitive property by use of private donations and to maintain the property in their natural condition. You have informed us that the conservancy qualifies under 501(c)(3) as a bona fide educational organization.

The conservancy would like to take a legislative official on a tour of Santa Cruz Island. The conservancy owns Santa Cruz Island on which they maintain a nature preserve. The purpose of the tour is to demonstrate the type of activity in which the conservancy is involved. The preserve is only accessible by the conservancy's plane or boat. The conservancy would like to provide transportation for the official to and from Santa Cruz Island.

ANALYSIS

Transportation to and from Santa Cruz Island

Section 82028(a) defines "gift" as any payment to the extent that consideration of equal or greater value is not received. 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."

(Section 82028(b)(1).)

Under this definition anything of value given to a public official without cost is a gift and must be reported unless expressly exempted. (Section 82028.) Free informational material, such as reports or periodicals, are expressly exempted from the "gift" definition. Transportation or reimbursement for any expenses associated with the informational material, however, is expressly excluded from the exception, and would therefore be a reportable gift. (Section 82028(b)(1).)

In 1975 the Commission interpreted "informational material" to include both tangible and intangible materials. Where a public official was to receive a private guided tour of a nuclear power plant, the Commission found that the tour was the informational material and therefore, the value of the tour was not a gift to the official. (In re Spellman, supra.)

You stated in your letter that the conservancy would like to take a legislative official on a tour of Santa Cruz Island to demonstrate the type of activity in which the conservancy is involved. You also said that the preserve is only accessible by the conservancy's plane or boat. You have asked whether the conservancy may provide transportation for the official to and from Santa Cruz Island without the cost of the transportation being treated as a gift to the official pursuant to Section 82028.

Under the Spellman opinion, the cost of the tour of Santa Cruz Island provided by the conservancy would not be a reportable gift. The tour would be intangible informational material and be excluded from the definition of "gift" by Section 82028(b)(1). In addition, the transportation to and from the tour site would be excluded from the "gift" definition as part of the informational material provided there is no other means to reach the site. (Duffy Advice Letter, No. A-84-084, copy enclosed.)

Regulation 18228

You have asked whether Regulation 18228 (copy enclosed) was adopted to supersede the Commission's interpretation of the term "informational material" as set forth in In re Spellman, supra. Regulation 18228 provides:

...[P]ayments made to an elected officer or candidate for his or her accommodations or transportation are gifts unless the accommodations or transportation provided to the elected officer or candidate are directly in connection with campaign activities, including attendance at political fund-raisers.

Regulation 18228 was intended to clarify, for reporting and disqualification purposes, when payments for food, lodging and travel is a gift, and when it is a contribution. Under this regulation all payments for food, lodging and travel are gifts unless it can be demonstrated that the accommodations or transportation provided to the elected official are directly connected to campaign activities.

Regulation 18228 was adopted specifically to deal with situations in which a payment for transportation and lodging falls within both the "gift" definition and the definition of "contribution." (Commission Memorandum on Regulation 18228, copy enclosed.) The regulation was not intended to expand the statutory definition of "gift." Thus, Regulation 18228 will not create a gift for disclosure and disqualification purposes if no gift exists within the meaning of Section 82028.

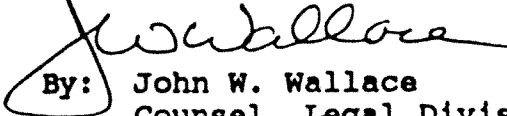
Therefore, Regulation 18228 did not change the definition of a "gift" in Section 82028. Thus, the interpretation of Section

82029 set forth in In re Spellman, and advice letters based on the opinion are still valid precedent.

I trust that this answers your question. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel


By: John W. Wallace
Counsel, Legal Division

KED:JWW:plh

Enclosures

Law Offices of

OLSON, CONNELLY, HAGEL & FONG

April 20, 1989

FPPC

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Kathryn E. Donovan, General Counsel
FAIR POLITICAL PRACTICES COMMISSION
428 "J" Street, Suite 800
Sacramento, California 95814

HAND DELIVERED

RE: REQUEST FOR FORMAL WRITTEN ADVICE; CONFIRMATION OF
TELEPHONE ADVICE

Dear Ms. Donovan:

I write on behalf of my client The Nature Conservancy. I seek written confirmation of telephone advice recently provided by Ms. Colleen McGee of the Technical Assistance and Analysis Division. I also seek formal written advice regarding a different but related question.

Confirmation of Telephone Advice

Earlier this week, I asked Ms. McGee a series of questions regarding lobbying. The questions and the answers will be stated below.

1.) Is an employee of a lobbyist employer, who is not a lobbyist (employed full-time primarily to do other duties) attempting to influence legislative or administrative action when that employee discusses pending or potential legislation with a state administrative agency?

Answer: No. Discussion of pending or potential legislation with a state administrative agency does not constitute attempting to influence legislative or administrative action, even with regard to budget items. However, discussions with the Governor's Office regarding signing or vetoing legislation would fall into that category; this would include budget items.

2.) If the same employee contacts a legislator or a legislator's staff to inquire as to the legislator's position on pending or potential legislation, does that constitute attempting to influence legislative or administrative action?

Answer: No. So long as the contact merely involves obtaining information about the legislator's

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OF COUNSEL
LLOYD G. CONNELLY, Member
California State Legislature

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position, the employee is not attempting to influence legislative or administrative action. However, if the conversation strays beyond the mere gathering of information and a discussion about the legislation ensues, then the contact counts as one for the purpose of attempting to influence legislative action.

3.) The Nature Conservancy owns Santa Cruz Island, which it holds as a nature preserve. There is a dirt airstrip on the island, on which only planes operated by The Nature Conservancy may land. (There is a lessee on a portion of the island. The lessee is permitted by The Nature Conservancy to land its own plane for its own use; but the general public is not allowed.)

TAQA
The Nature Conservancy wishes to take a legislative official on an informational tour of the island to demonstrate the type of activities which The Nature Conservancy undertakes to preserve environmentally sensitive areas.

The only means of reaching the island from the shore is by way of a boat or airplane provided by The Nature Conservancy. The legislator will provide his own transportation to the point of departure on the mainland.

Does the transportation provided out to the island and back to shore (via private airplane) fit within the "informational tour" exclusion under Government Code Section 82028(b)(1)?

This exclusion was first enunciated in the Spellman Opinion, 1 FPPC Ops. 16, No. 75-026 (May 1, 1975). It has been followed in circumstances similar to these in the Advice Letter to Gordon Duffy, No. A-84-084; and in other advice letters as well, such as the Advice Letter to Lance Olson, No. A-85-218; and the Advice Letter to Ro Aguilar, No. A-86-243.

Answer: The Nature Conservancy situation fits within the facts of the Duffy letter and Spellman Opinion. Hence, the transportation to and from the island from the mainland would not constitute a gift within the meaning of Government Code Section 82028, if those interpretations are still valid. However, the staff is unsure of the impact upon those earlier interpretations of recently adopted Regulation 18228. Consequently, the staff suggests that formal written advice be sought on this issue.

Formal Written Advice Requests

Legal
1.) With respect to question 3, above, please advise whether the Spellman Opinion and the Duffy letter are still operative. I

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have reviewed Regulation 18228 and the initial and final statements of reasons in the rulemaking file. It is my conclusion that the regulation does not address nor does it alter, the exclusion for informational materials (and tours) under Government Code Section 82028(b)(1). No mention is made of overruling the Spellman Opinion or any advice letters.

Legal

I believe the thrust of Regulation 18228 to be the issue of when travel to various types of events should be considered as a campaign contribution or as a gift. The purpose of the regulation was to establish guidelines for making that distinction. However, its purpose was not to make that a gift which was not otherwise a gift under the statute, simply because travel was somehow involved.

If that were the case, travel provided by a brother or sister of an elected officer or candidate would now be considered gifts to that officer, even though specifically excluded by the statute in Government Code Section 82028(b)(3).

2.) I now raise a different question which my client would like answered as well. The Nature Conservancy is a non-profit, tax exempt corporation under Internal Revenue Code Section 501(c)(3). Contributions to The Nature Conservancy are tax deductible.

It is formed for the scientific and educational purpose of acquiring through private donations environmentally sensitive properties to be held in their natural state. Its mission is to find, protect, and maintain the best examples of communities, ecosystems, and endangered species in the natural world. Thus, The Nature Conservancy is a "bona fide educational organization" within the meaning of Government Code Section 82030(b)(2).

Since reimbursement for travel expenses and per diem received from a bona fide charitable organization is not "income" within the meaning of Government Code Section 82030, wouldn't the transportation discussed in the preceding question, and any other travel (or per diem) provided by The Nature Conservancy, be exempted from being considered a "gift" in any event? The term "income" as defined in Section 82030(a) includes the term "gift."

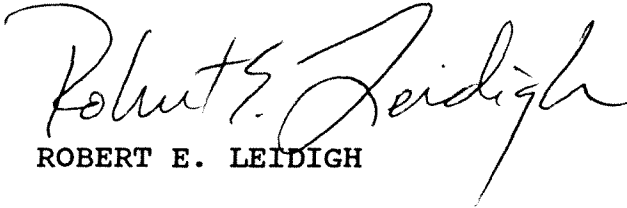
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Conclusion

I ask that you provide written confirmation of the telephone advice discussed herein as well as formal written advice in response to the two questions posed above.

Very truly yours,

OLSON, CONNELLY, HAGEL & FONG

A handwritten signature in cursive script, reading "Robert E. Leidigh". The signature is written in black ink and is positioned above the printed name.

ROBERT E. LEIDIGH

cc: Donald Duprey
Regional Counsel
The Nature Conservancy