



California Fair Political Practices Commission

October 30, 1990

Steven C. DeBaun
Best, Best, & Krieger
400 Mission Square
3750 University Avenue
Post Office Box 1028
Riverside, CA 92502

Re: Your Request for Assistance
Our File Nos. I-90-500 and I-90-549

Dear Mr. DeBaun:

This is in response to your request for advice regarding the application of the disclosure and disqualification provisions of the Political Reform Act (the "Act").¹ Since your request seeks general guidance regarding the application of the Act, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

Under the facts described, does the Commission's Opinion in In re Stone (1977) 3 FPPC Ops. 52, exempt the agency's Executive Director from the disclosure and disqualification obligations imposed by the Act with reference to a utility's payment of the expenses of the Executive Director for a tour/workshop at the utility's facilities in the Sierras and associated travel, accommodations, and food?

CONCLUSION

Under the facts described, the Commission's Opinion in In re Stone (1977) 3 FPPC Ops. 52, exempts the agency's Executive

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 Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs.)

Director from the disclosure and disqualification obligations imposed by the Act with reference to the utility's payment of the expenses of the Executive Director for the tour/workshop and associated travel, accommodations, and food.

FACTS

A utility company has offered to allow a governmental agency's (the "agency") officials and staff at any level to participate in a tour/workshop of some of the utility company's facilities in the Sierras. Expenses for the tour/workshop and associated travel, accommodations, and food will be paid for by the utility company. The utility company has allowed the agency full discretion as to how the agency will determine who will participate in the tour/workshop. The agency has adopted a resolution (see attached) accepting the gift of the tour/workshop on behalf of the agency and authorizing the agency's chair to determine who will participate. The agency's chair has subsequently asked the agency's Executive Director to go and represent the agency.

ANALYSIS

The thrust of your question is whether the utility's payment of the expenses of the agency's Executive Director for the tour/workshop and associated travel, accommodations, and food constitutes a gift to the Executive Director.

Section 82028(a) defines a gift as follows:

"Gift" means ... any payment to the extent that consideration of equal or greater value is not received

Since it does not appear that the agency's Executive Director has provided consideration of equal or greater value to the utility, the payment, without more, would be deemed a gift to the Executive Director.³ If it is a gift valued at \$250 or more, the Executive Director would have to disqualify himself from any decisions which will have a reasonably foreseeable and material financial effect on the utility which is distinguishable from the effect on the public generally. (Section 87103(e).) Gifts of \$50 or more are reportable on financial disclosure statements. (Section 87207(a)(1).)

In re Stone (1977) 3 FPPC Ops. 52 (copy enclosed), the Commission concluded that in certain situations, a gift may be

Section 18329(c)(3).)

³ It is possible that the expenses for the tour/workshop may be deemed to be "informational materials" within the meaning of Section 82028(b)(1) and, thus, be excluded from the definition of

made to a city without providing any significant or unusual benefit to the public official. Under such circumstances, the public official has no reporting obligations since any benefit he or she receives, although free of charge to the official and to the city, "would be analogous to reimbursement for expenses or per diem from a state or local government agency, items which are not reportable. Section 82030(b)(2)." (In re Stone, supra, at 57.) The Commission stated that to be deemed a gift to the city, the gift (i.e., reimbursement) should satisfy at least the following four criteria:

1. The donor intended to donate the gift to the city and not to the official;
2. The city exercises substantial control over use of the gift;
3. The donor has not limited use of the gift to specified or high level employees, but rather has made it generally available to city personnel in connection with city business without regard to official status; and
4. The making and use of the gift was formalized in a resolution of the city council ... which embodies the standards set forth above.

In re Stone, supra, 3 FPPC Ops.
at 57.

In the circumstances you have described, it appears that the utility and the agency have acted in accordance with the criteria laid out in the Stone Opinion. It appears that the utility intended to make the tour/workshop available to officials and staff at any level of the agency, and did not limit its use to specified or high level employees. Moreover, it appears that the agency exercised substantial control over the use of the gift and adopted a resolution accepting the gift. Accordingly, the gift will be deemed a gift to the agency; the Executive Director who attends the tour/workshop will have no reporting requirements since, as in the Stone Opinion, any benefit he receives would be analogous to reimbursement for expenses or per diem from the city. Such items are excluded from reporting under Section 82030(b)(2).

Since the tour/workshop is not a gift or income to the Executive Director, it does not give rise to any disqualification obligations under Sections 87100 and 87103.

a gift. This exclusion, however, would not apply to the travel, accommodations, and food received by the Executive Director.

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Scott Hallabrin
Acting General Counsel

Joseph Garcia by Jewan S. Aluj
By: Joseph Garcia
Senior Commission Counsel,
Legal Division

Enclosures