



California Fair Political Practices Commission

November 27, 1991

Margaret J. Khan
Grossfeld, Dougherty and Grossfeld
Kiefer Plaza
3201 Florin-Perkins Road, Suite 300
P. O. Box 276005
Sacramento, CA 95826-6005

Re: Your Request for Advice
Our File No. A-91-490

Dear Ms. Khan:

You have requested follow-up advice on behalf of Sheldon H. Grossfeld, a member of the State Board of Architectural Examiners in the Department of Consumer Affairs, and the lobbying firm of Grossfeld, Dougherty and Grossfeld. You have requested formal written advice with respect to the provisions of the Political Reform Act (the "Act")¹ regulating lobbyists and lobbying firms. This letter provides supplemental advice with respect to the issues raised in our letter of October 17, 1991, Khan Advice Letter, No. I-91-454.

QUESTIONS

1. What limits are imposed on Grossfeld, Dougherty and Grossfeld with respect to payments for entertainment of the following public officials:

- (a) Legislators and elected state officials;
- (b) Appointed state officials and legislative staff persons;
- (c) Elected and appointed local officers;
- (d) Members of the judiciary?

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. Where Grossfeld, Dougherty and Grossfeld is a lobbying firm and Grossfeld, Dougherty and Grossfeld's senior partner, Sheldon H. Grossfeld, is a member of the State Board of Architectural Examiners within the Department of Consumer Affairs:

(a) Are usual and customary payments made by the firm to the partner subject to monetary limits?

(b) Does the Act impose obligations on the firm with respect to usual and customary payments made by the firm to the partner?

CONCLUSIONS

1. Lobbyists and lobbying firms may not make gifts to state officials, and state officials may not knowingly receive gifts from a lobbyist or lobbying firm aggregating more than \$10 in a calendar month if the lobbyists or lobbying firms attempt to influence the actions of the official's agency, or the official is a state candidate, elected state officer, or legislative official.

Moreover, the Act also places gift limits on the following officials:

(a) Members of the Legislature, the Governor, the Lieutenant Governor, the Attorney General, the Controller, the Secretary of State, the Treasurer, the Superintendent of Public Instruction, and members of the State Board of Equalization are all prohibited from accepting gifts from any single source in any calendar year with a total value of more than \$250.

(b) Members of other state boards and commissions and designated employees of state agencies, including legislative staffers, are prohibited from accepting gifts of more than \$250 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.

(c) Local appointed officials are not subject to the gift limits of the Act. Local elected officeholders are prohibited from accepting any honoraria for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering, or any gifts, from any single source, which is in excess of \$1,000 in any calendar year.

(d) Judges are not subject to the gift limits of the Act.

The gift limits set forth in (a) - (d), above do not supersede the \$10 limit applicable to lobbyists.

2. Despite the fact that Grossfeld, Dougherty and Grossfeld is a lobbying firm and Mr. Grossfeld is a member of the State Board of Architectural Examiners within the Department of Consumer Affairs:

(a) So long as Mr. Grossfeld provides full and adequate consideration to the firm, making the usual and customary payments he receives a part of his earned compensation, the payment is not subject to the Act's limits; and,

(b) The usual and customary payments made to Mr. Grossfeld would not be reportable activity expenses if the firm does not lobby Mr. Grossfeld's agency.

FACTS

Sheldon H. Grossfeld is a senior partner in the law firm of Grossfeld, Dougherty and Grossfeld (the "firm") and has been appointed to the State Board of Architectural Examiners within the Department of Consumer Affairs. As a partner in the law firm, Mr. Grossfeld receives payments from the firm for usual and customary expenses associated with his position. For example, as part of compensation, the firm provides lunches, entertainment and travel where required in conjunction with his duties as a partner of the firm.

The firm is also registered as a lobbying firm pursuant to the requirements of the Act. The firm does not lobby the Board of Architectural Examiners or the Department of Consumer Affairs. All expenditures by the firm for Mr. Grossfeld are in conjunction with his position and duties as a partner of the firm and are not related to his activities as a public official.

ANALYSIS

1. Gift Limits

The Act provides special gift limits applicable to lobbyists and lobbying firms. Chapter 6 of the Act provides:

"Gift" as used in this article means a gift made directly or indirectly to any state candidate, elected state officer, or legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist.

Section 86201.

It shall be unlawful for a lobbyist, or lobbying firm, to make gifts to one person aggregating more than ten dollars (\$10) in a calendar month, or to act as an agent or

intermediary in the making of any gift, or to arrange for the making of any gift by any other person.

Section 86203.

It shall be unlawful for any person knowingly to receive any gift which is made unlawful by Section 86203.

Section 86204.

Thus, the \$10 gift limit applies to gifts made to any state candidate, elected state officer, or legislative official. In addition, the limit applies to any "agency official," which is defined as any official of a state agency whose administrative actions the lobbyist, lobbying firm, or lobbyist employer has attempted or is attempting to influence. (Section 86111(b).)

In addition, expenses incurred or payments made by a lobbying firm or arranged by a lobbyist or lobbying firm, which benefit in whole or in part any elective state official, legislative official, agency official, state candidate, or a member of the immediate family of one of these individuals are reportable as "activity expenses." (Section 86111(a).) Activity expenses include gifts, honoraria, consulting fees, salaries, and any other form of compensation. (Section 86111(a); Trifon Advice Letter, No. A-86-294.) However, neither the limit nor statutes requiring the disclosure of activity expenses is applicable to the payments you described if such payments are made to an agency official whose actions the lobbying firm is not attempting to influence.

Effective January 1, 1991, the Act was amended to provide a series of new gift limits² which apply to public officials. These provisions establish a set of restrictions that are in addition to those provided in Chapter 6 of the Act concerning lobbyists. Moreover, these limits apply to donors who are not lobbyists, as well as those that are. For example, a lobbyist may only provide \$10 in gifts to a legislator in a calendar month under the gift limits in Chapter 6, but is not restricted with respect to gifts to agency officials in agencies that the lobbyists does not lobby. In the latter case, however, the gifts would still be limited by the new gift limits of the Act.

The new gift limits of the Act apply as follows:

(a) Elected State Officers: No elected state officer may accept gifts from any single source in any calendar year with a total value of more than \$250. (Section 89504(a).) An "elected state officer" is defined as any person who holds

² Different rules apply to honoraria received by state elected and appointed public officials. (See Sections 89501 - 89503.)

the office of Governor, Lieutenant Governor, Attorney General, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, member of the Legislature and member of the State Board of Equalization. (Section 82021; Section 82024.)³

(b) Members of State Boards and Commissions and Designated Employees of State Agencies: No member of a state board or commission, and no designated employee of a state agency, may accept gifts with a total value of more than \$250 in a calendar year from any single source, if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interest.

Pursuant to Section 87300, every state agency must adopt and promulgate a conflict of interest code. Every conflict of interest code must designate the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest and shall state the specific types of investments, business positions, interests in real property, and sources of income which the designated employees are required to report. (Section 87302.)

Thus, the new gift limits of the Act applicable to members of state boards and commissions and designated employees only apply to sources which are reportable under the conflict of interest code of the agency.

(c) Elected and Appointed Local Officers: Local appointed officials are not subject to the gift limits of the Act. Local elected officeholders are prohibited from accepting combined honoraria and gifts from any single source, which is in excess of \$1,000 in any calendar year.⁴ (Section 89501.) The statute defines honoraria as a payment for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.

(d) Judges: Judges are not subject to the gift limits of the Act. (Sims Advice Letter, No. I-91-104.)

³ Effective January 1, 1992, the term "elected state office" to include the office of the Insurance Commissioner.

⁴ Reimbursement for actual travel expenses and reasonable subsistence in connection with a speech is expressly exempted from the limit. (Section 89501.)

2. Receipt of Usual and Customary Payments

"Gift" is defined in Section 82028 as any payment to the extent that consideration of equal or greater value is not received. "Income" is defined in Section 82030 as any payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, loan, forgiveness or payment of indebtedness received by the filer and reimbursement for expenses or per diem. Both income and gifts must be disclosed, and both income and gifts of \$250 or more are potentially disqualifying financial interests. (Section 87103(c) and (e).) However, the Act's gift limits do not apply to income.⁵

The primary distinction between a gift and income is whether the recipient has provided equal consideration in exchange for the payment. If a payment is received and the recipient does not provide consideration of equal or greater value to the source of the payment, the payment will be considered a gift. Conversely, where the recipient can demonstrate that he or she in fact provided equal consideration for the payment, the payment will be treated as income.

You asked whether usual and customary payments made to Mr. Grossfeld, who is a partner in the firm and a member of the State Board of Architectural Examiners in the Department of Consumer Affairs, were limited by any of the gift limits in the Act, or whether such payments must be reported as "activity expenses" of the firm. You stated the firm does not lobby Mr. Grossfeld's agency.

As stated above, so long as Mr. Grossfeld provides full and adequate consideration to the firm, making the usual and customary payments a part of his earned compensation, the payment is not a gift but is treated as income. (Section 82028; Section 82030.) Thus, the Act's limits on gifts would not apply to the payments.

Moreover, as discussed above, such payments would not be activity expenses. An "activity expense" is any expense incurred or payment made by a lobbying firm or arranged by a lobbyist or lobbying firm, which benefits in whole or in part any elective state official, legislative official, agency official, state candidate, or a member of the immediate family of one of these individuals. (Section 86111(b).) Activity expenses include gifts, honoraria, consulting fees, salaries, and any other form of compensation. (Section 86111(a); Trifon, supra.) However, since

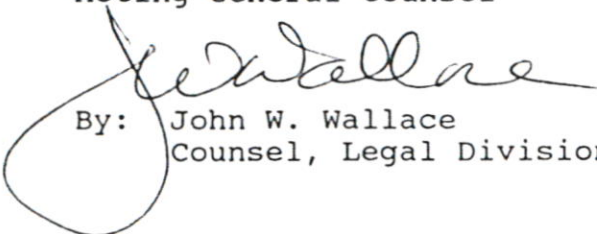
⁵ Please note that the definition of "honoraria" includes income provided in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. (Section 89502(b).) However, honoraria are not in issue under your facts.

you do not lobby Mr. Grossfeld's agency, Mr. Grossfeld would not be an "agency official" for whom reporting by the firm is required.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.⁶

Sincerely,

Scott Hallabrin
Acting General Counsel


By: John W. Wallace
Counsel, Legal Division

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⁶ Copies of Commission regulations and Opinions are available in many law libraries. Alternatively, copies of these materials and Commission advice letters may be obtained from the Commission at a cost of 10¢ per page.