



# California Fair Political Practices Commission

December 12, 1991

Conni Barker  
Director  
Governmental Relations  
Association of California Water Agencies  
910 K Street, Suite 250  
Sacramento, CA 95814-3577

Re: Your Request for Informal Assistance  
Our File No. I-91-496

Dear Ms. Barker:

This is in response to your letter requesting confirmation of telephone advice provided to you on October 24, 1991, concerning your responsibilities pursuant to the provisions of the Political Reform Act (the "Act")<sup>1</sup> concerning gifts. In addition, this letter discusses generally the other questions raised in our telephone conversation of October 24, 1991.

## QUESTIONS

1. In valuing gifts in order to comply with the gift limits of the Act, is sales tax included in the total value of the gift?
2. In valuing personalized plaques and trophies for purposes of the exceptions to the definition of "gift," is sales tax included in the total value of the gift?

## CONCLUSIONS

1. The fair market value of an item should include applicable sales tax.

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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.

2. In valuing personalized plaques and trophies for purposes of the exceptions to the definition of "gift," sales tax should be included and only if the total value of the gift, including tax, is less than \$250 will the exception apply.

DISCUSSION

Effective January 1, 1991, the Act now provides gift limits applicable to all local elected officers, state elected and appointed officers, and designated employees. For example, Section 89504 provides in pertinent part:

(a) No elected state officer shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).

\* \* \*

(e) The limitations in this section are in addition to the limitations on gifts in Section 86203.

Section 82028 defines a "gift" as follows:

(a) "Gift" means, except as provided in subdivision (b), any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.

\* \* \*

(b) The term "gift" does not include:

\* \* \*

(2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes.

\* \* \*

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

You have requested assistance concerning the valuation of gifts. While generally, the burden of complying with the gift limits of the Act is applicable to the public official, a donor may be liable for providing a gift in excess of limits to an official under a variety of circumstances.

For example, Section 89521 provides that any person who makes or receives an honorarium, gift, or expenditure in violation of Chapter 9 of the Act is liable in a civil action brought by the Commission for an amount of up to three times the amount of the unlawful honorarium, gift, or expenditure.

Moreover, effective January 1, 1992, lobbyists, lobbying firms and lobbyist employers will be required to notify public officials of the date and amount of any gifts that they provide to officials.<sup>2</sup> (See, Chapter 322, Statutes of 1991.)

### Valuation

Commission regulations provide specific methods of valuation for many types of gifts. For example, the valuation of gift passes and season tickets is set forth in Regulation 18726.3; the valuation of gifts of testimonial dinners is dealt with in Regulation 18726.4; the valuation of wedding gifts may be determined pursuant to Regulation 18726.5; and, the valuation of gift tickets to charitable and political fundraisers is set forth in Regulation 18726.8.

For other gifts, the fair market value must be used. Section 82025.5 defines "fair market value" as the estimated fair market value of goods, services, facilities or anything of value other than money. Whenever the amount of goods, services, facilities, or anything of value other than money is required to be reported under this title, the amount reported is the fair market value, and a description of the goods, services, facilities, or other thing of value must be appended to the report or statement.

In determining the value of a gift for purposes of the new gift limits, we would advise that you include the amount of sales tax. This would be consistent with prior advice provided in the context of the \$10 gift limit applicable to lobbyists and lobbying firms where we have advised that sales tax must be included in determining the cost of a meal. (See, Krause Advice Letter, No. A-82-116.)

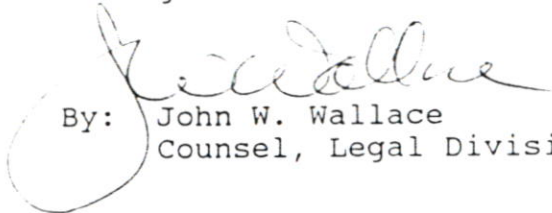
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<sup>2</sup> See also, Section 86203 which provides that it shall be unlawful for a lobbyist, or lobbying firm, to make gifts to one person aggregating more than \$10 in a calendar month, or to act as an agent or intermediary in the making of any gift, or to arrange for the making of any gift by any other person.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>3</sup>

Sincerely,

Scott Hallabrin  
Acting General Counsel

  
By: John W. Wallace  
Counsel, Legal Division

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<sup>3</sup> 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.