



California Fair Political Practices Commission

August 26, 1992

Dorothy Cornelius, CMC
City Clerk
City of Cupertino
10300 Torre Avenue
Cupertino, CA 95014-3255

Re: Your Request for Informal Assistance
Our File No. I-92-260

Dear Ms. Cornelius:

This is in response to your request for advice on behalf of the City of Cupertino regarding reporting obligations of city employees under the Political Reform Act (the "Act").¹ Because your request is general in nature and you have not named any specific individuals on whose behalf you have requested this advice, we are treating your request as one for informal assistance.²

Please note that nothing in this letter should be construed to evaluate any conduct which may have already taken place. In addition, this letter is based on the facts presented to us. The Commission does not act as the finder of fact in providing advice. (In re Ogelsby (1975) 1 FPPC Ops. 71.)

QUESTION

Are city employees required to report on their annual Statements of Economic Interests the receipt of vendor discounts obtained by means of a discount card provided to them by the Cupertino Chamber of Commerce?

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 granted by formal advice. (Regulation 18329(c)(4)(c).)

CONCLUSION

Where the discount cards are offered to all city employees and officers on an equal basis, without regard to official status, the discount cards will not be a disclosable gift under the Act.

FACTS

The Cupertino Chamber of Commerce, in conjunction with the City of Cupertino, conducts an annual "Shop Cupertino" program. The city assists in the funding of the program, but does not control the development or implementation of the program.

This year, as part of the chamber of commerce's program, the chamber has developed a "member to member discount." Chamber members are eligible to receive cards that will entitle the holder to discounts on goods or services from participating merchants. You stated that some of the vendors participating in the program are attorneys, bowling alleys, jewelry stores, hotels and restaurants. You confirmed in our telephone conversation of August 13, 1992, that nonchamber members cannot obtain the discount cards.

In addition to chamber members, the chamber also wants to provide the discount cards to city employees, irrespective of whether they are chamber members or not. You stated in our telephone conversation of August 13, 1992, that if the employees were to become chamber members, the cost would be \$90 annually, plus a one time \$10 initiation fee.

ANALYSIS

The Act requires that every public official disclose all his or her economic interests that could foreseeably be affected by the exercise of the official's duties. (Sections 81002(c), 87200-87313.) For example, city councilmembers and certain other city officials who are designated in Section 87200 must disclose all gifts worth \$50 or more received from any source. (See also, Section 87207.)

In addition, other designated employees are required to report gifts received from sources that are set out in their conflict of interest code. Section 87300 provides that every agency shall adopt and promulgate a conflict of interest code which specifically enumerates the positions within the agency which involve the making or participation in the making of decisions which may foreseeably materially affect financial interests and provide the specific types of investments, business positions, interests in real property, and sources of income which

are reportable by the person who holds that position. (Section 87302.)³

You have asked whether various vendor discounts that are provided to the city employees through a program of the city's chamber of commerce are gifts which will be subject to disclosure.

Section 82028 defines the term "gift" to include:

[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.

Thus, the discount is a gift unless the discount is made in the regular course of business to members of the public without regard to official status.

In In re Russel (1975) 1 FPPC Ops. 191, the Commission interpreted the language of the statute in connection with a discount offered by the Holiday Inn to all state employees. The Commission stated:

However, many discounts are offered to all members of the public and do not create any potential for improper influence. Requiring the disclosure of all discounts would impose burdensome reporting requirements without serving a legitimate public purpose. Consequently, the statutory definition of "income" excludes discounts which are made available to members of the public without regard to their official status.

* * *

We think that the purposes of the political Reform Act are best served by interpreting the words "official status" to refer to the capacity in which one performs official actions.

* * *

Consequently, a discount that is available to all employees of the State of California, without regard to what office or position they hold in state government, is a discount made available "without regard to official status."

³ The Act also limits the receipt of gifts by local elected officers (Section 89501) and require disqualification under some circumstances. (See, 87100, et seq.)

* * *

The statutory language does not require that the discount be made available to "all" members of the public, but implies that the discount will be offered on a uniform basis to a diverse group. In the circumstances posed by this opinion request, the discount is made available to all employees of the State of California. This group is a large and heterogeneous assortment of individuals which includes more than 130,000 persons. Because of the size and diversity of the class, we conclude that a discount available to all state employees is a discount made "available to members of the public."

In addition, in the Abbott Advice Letter (No. A-88-049), we advised that where a discount card was made available to all county employees on the same terms and conditions as other groups, the discounts were made available to the public without regard to the official status of the official.

In your case, as in the Abbott letter, the true gift is not the discounts provided by merchants, but the ability to obtain a discount card and the discounts without becoming members of the chamber of commerce. You stated in our telephone conversation of August 13, 1992, that if the employees had to become members, they would have to pay \$90 annually, plus a one time \$10 initiation fee to be members of the chamber. Thus, the discount is for \$100 the first year and \$90 in subsequent years.

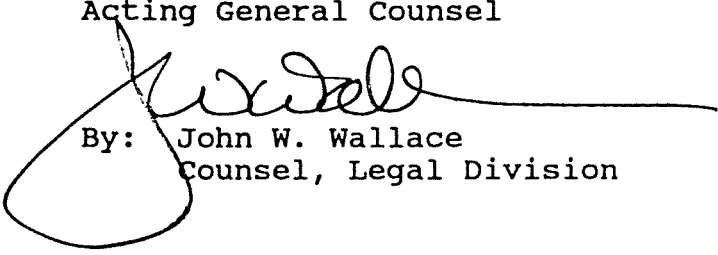
However, both Abbott and Russel found that a discount which was made available to a class of public employees was available to members of the public without regard to their official status. The rationale was that the gift was not being made solely to state or county officers who might make decisions that could affect the interests of the donor, but to all public employees, regardless of whether they might be in a position to affect the donor financially. We believe this rationale would also apply to this situation where the discount card will be available to all city employees, including elected officials, designated employees, and nondesignated employees alike.⁴

⁴ Please note that this exception is limited to the facts contained in this letter and might not apply in every case where a discount was made available to large groups of people, especially where the gift was in fact made to benefit decision-makers.

If you have any further questions regarding this matter,
please feel free to contact me at (916) 322-5901.⁵

Sincerely,

Scott Hallabrin
Acting General Counsel



By: John W. Wallace
Counsel, Legal Division

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