



California Fair Political Practices Commission

September 11, 1992

Anthony P. Najera
American Lung Association
1010 11th Street, Suite 208
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-92-557

Dear Mr. Najera:

You are requesting advice on behalf of the American Lung Association and Senator Ed Davis regarding certain provisions of the Political Reform Act (the "Act").¹ This letter confirms the advice provided to you during our telephone conversation of August 17, 1992, regarding your questions.

QUESTIONS

- 1) May the American Lung Association, a nonprofit association, sponsor a retirement party for Senator Ed Davis in conjunction with a fundraising event for the nonprofit association?
- 2) May Senator Ed Davis use his campaign funds to purchase tickets to the event in order to provide complimentary tickets to various members of the Legislature and others?
- 3) Would it be permissible for the American Lung Association to offer tickets to legislative staff members for the cocktail component of the event only?

CONCLUSIONS

- 1) The American Lung Association, a nonprofit association, may sponsor a retirement party for Senator Ed Davis in conjunction with a fundraising event for the nonprofit association.

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) Senator Ed Davis may use his campaign funds to purchase tickets to this event for the purpose of providing complimentary tickets to legislators and other individuals. Campaign funds used by Senator Davis to purchase tickets to an event where he is the honoree are considered directly related to a political purpose.

3) It would be permissible for the American Lung Association to offer tickets to legislative staff members for the cocktail component of the event only.

FACTS

Senator Ed Davis is retiring from the California State Senate, and he is being honored at a testimonial dinner being planned in his honor by the American Lung Association of California. This event will also serve as a fundraising event for the American Lung Association, a 501(c)(3) tax exempt nonprofit organization. There will be a fixed price of \$125 for the event, of which \$100 will be paid directly to the vendor providing the food, beverages, music, flowers, and gratuities. The balance of \$25 will be an expressly enumerated charitable tax deductible contribution to the American Lung Association. Senator Davis would like to use a portion of his campaign funds to purchase tickets to the event which will be provided on a complimentary basis to legislators and others.

ANALYSIS

Question 1

The Act does not prohibit the American Lung Association, a nonprofit association, from sponsoring a retirement party for Senator Ed Davis in conjunction with a fundraising event for the nonprofit association.

You further state in your letter that the American Lung Association wishes to give the Senator two tickets to the event as a recordable gift. You ask if this is permissible.

Section 82028 provides in pertinent part:

"Gift" means...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.

Thus, any payment² to an official, to the extent that consideration of equal or greater value is not provided, creates disclosure obligations.³ Furthermore, Section 89504 provides 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).

Regulation 18946.2 provides specific guidance to determine the value of a dinner received by an official where he or she is honored. The regulation provides:

When an official is honored at a testimonial dinner or similar event, of which campaign fundraising for the official is not a purpose and at which event such fundraising does not occur, the value received by the official is his or her pro rata share of the cost of the event, plus the value of any specific tangible gift that is presented to the official at the event, and that is not excluded from the definition of "gift" by Government Code Section 82028.

However, where a gift of tickets is provided to an official to an event which is a fundraiser for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the value of the gift of tickets is determined pursuant to Regulation 18946.4. Regulation 18946.4 provides in pertinent part:

A gift of a ticket or other admission privilege to a specific fundraising event shall be valued as set forth below.

* * *

(b) Where the event is a fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the ticket or other admission privilege has no value.

You state in your letter that the American Lung Association is an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Consequently, a gift of tickets to the event has no value. Based on the above, a gift of tickets

² Section 82044 defines "payment" to include any payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

³ Section 87207 provides gifts of a value of \$50 or more are reportable.

provided to Senator Davis to the event by the American Lung Association is not reportable.⁴

You also state in your letter you contemplate giving Senator Davis a plaque valued at less than \$250. The term gift does not include personalized plaques and trophies with an individual value of less than \$250. (Section 82028(b)(6).) Thus, you may give Senator Davis a personalized plaque provided that its value is less than \$250. Based on the facts you have provided, no other subsidies or gifts are contemplated other than the plaque.

Please note that although you have not asked specifically about this question, the Act prohibits a lobbyist from arranging or acting as an intermediary for any gift of more than \$10 per official. (Section 86203; Johnston Advice Letter, No. A-77-349.)

Question 2

Section 89512 enunciates the standards applicable to the expenditures of campaign funds under the Act. The general rule is that any expenditure of campaign funds must be, at a minimum, reasonably related to a political, legislative, or governmental purpose.⁵

Section 89513 provides a list of specific activities for which campaign funds may be used provided that expenditures are directly related to a political, legislative, or governmental purpose. Section 89513(f)(1) specifically provides campaign funds shall not be used to make personal gifts unless the gift is directly related to a political, legislative, or governmental purpose. In addition, Section 89513(f)(2) provides an election victory celebration or similar campaign event is considered to be directly related to a political, legislative, or governmental purpose.

We have advised that campaign funds used for an election victory election or a "similar event" like a retirement party are statutorily deemed to be directly related to a political, legislative, or governmental purpose. (Carnevale Advice Letter, A-92-281 and Section 89513(f)(2).) Thus, campaign funds used to purchase a gift of tickets to an event in which Senator Davis is

⁴ This advice is limited to this set of facts, and does not apply where a gift of tickets is provided by an organization other than an organization exempt from taxation under Section (501)(c)(3) of the Internal Revenue Code.

⁵ Where an expenditure confers a substantial personal benefit on the candidate or officeholder, the expenditure must be directly related to a political, legislative, or governmental purpose. A substantial personal benefit is defined as a direct personal benefit to the candidate or officeholder of \$100 or more. (Section 89511(b)(2).)

the honoree are considered directly related to a political purpose. Furthermore, the complimentary tickets to the event provided by Senator Davis to legislators and others have no value, and therefore, are not reportable. (Regulation 18946.4(b).)

Question 3

Nothing in the Act prevents the American Lung Association from offering tickets to legislative staff members for the cocktail component only (no dinner) for an amount the vendor would charge per person for such limited attendance, such as \$35.

Should 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

Luisa Menchaca

By: Luisa Menchaca
Counsel, Legal Division

SH:LM:aa

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.