



California Fair Political Practices Commission

December 24, 1993

Peter A. Bagatelos
Bagatelos & Fadem
601 California Street, Suite 1601
San Francisco, CA 94106

Re: Your Request for Assistance
Our File No. I-93-132

Dear Mr. Bagatelos:

This is in response to your request for advice under the reporting provisions of the Political Reform Act.^{1/} This letter will also serve to confirm our telephone conversation of March 29, 1993. Since you are seeking advice on behalf of an unidentified client, we are treating your letter as a request for general guidance.^{2/}

QUESTIONS

1. What are the reporting obligations of a public official attending an event sponsored by a charitable organization formed pursuant to Internal Revenue Code Section 501(c)(3) where "fundraising" for the charitable organization did not occur?

2. If a charitable organization sponsors an event which public officials attend and the cost of entertainment is paid for by a third party business entity, does the payment of entertainment costs constitute a reportable gift to the public official or by the business entity?

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. Section 18329(c)(3).)

CONCLUSION

1. The public official will report the value of the admission price as a gift from the charitable organization. However, other intangible benefits are not reportable gifts.
2. Since entertainment is an intangible benefit and intangible benefits do not constitute a gift, the cost is not reportable.

FACTS

The facts in this letter represent information provided in your letter as well as information you provided during our March 29, 1993, telephone conversation.

A tax-exempt charitable organization formed pursuant to Internal Revenue Code Section 501(c)(3) sponsored an event for the purpose of promoting the programs and mission of the organization. The event was not for the purpose of receiving charitable contributions. A price of admission was charged by the charitable organization to attendees for the event. No portion of the admission price was considered a donation.

Your client, a for-profit business entity, paid all costs associated with the entertainment provided during the event. You stated your client paid for lighting and sound equipment, salaries of the stage hands, singers and producers, the cost of the caterer to feed the stage hands, etc. The charitable organization did not reimburse the business entity for these costs.

During our conversation, you stated that the event was not for the purpose of raising funds for the organization or for the purpose of entertaining public officials, but rather an event to promote the mission of the organization. At the event certain attendees were acknowledged for their efforts and work for the organization. One such attendee was a public official who attended free of charge and was saluted for his work in promoting the organization.

In our telephone conversation, you asked how to value certain intangible benefits, such as flowers, tablecloths and entertainment. Your letter now asks what obligations the business entity incurred in providing these items.

ANALYSIS

Section 87203 requires public officials to file financial disclosure statements disclosing investments, interests in real property, income, gifts and loans. The definition of "gifts" includes gifts of food and beverage. Public officials would be

required to disclose, on their statements of economic interests, all sources of gifts aggregating \$50 or more received during the reporting period on the statement. (Sections 82030, 87207.)

A gift of a ticket to a fundraising event for an organization exempt from taxation under 501(c)(3) is deemed by the Commission to have no value. Thus, it is not a reportable gift by a public official. (Regulation 18946.4(b).)

Regulation 18946.4 does not apply to your question, however, because the ticket is for an event that does not involve fundraising.

If the event were solely a testimonial dinner or to honor a public official, Regulation 18946.2 would value the gift to the official as the official's pro rata share of the cost of the event, plus the value of any specific tangible gift presented to the official at the event. In our telephone conversation you indicated that the primary purpose of the event was to promote the program and mission of the organization. At the event the charitable organization acknowledged certain attendees, one such attendee was a public official who was "saluted" for his work. The event was not organized specifically to honor the public official attending. Thus, Regulation 18946.2 would not apply to your question.

Thus, no exception applies to the public official's receipt of free admission to the event. Since the organization charged attendees a one-time admission price which covered the actual costs of the event by the charitable organization, the gift the public official received was the value of the ticket. (Regulation 18946.1.)

In 1987, when the Commission first considered regulations valuing gifts to political and charitable fundraisers, it specifically considered third party payment of intangible benefits, such as entertainment. The Commission determined that the value is often too difficult to ascertain and adopted the regulation specifically deleting the proposed language requiring that intangible benefits, such as entertainment, be reported as a gift. (Minutes of Commission Meeting, January 13, 1987 at page 4.)^{3/} For example, music appreciated by one person may be deafening or obnoxious to another.

^{3/} We believe it was the intent of the Commission to delete the valuing of entertainment at a fundraising event only when the primary purpose of the event is something other than that of providing entertainment. Tickets to purely entertainment events, such as concerts, are gifts to an official, unless a specific exception to the Act's rules on gifts applies.

We believe this rationale would apply equally to an organization's non-fundraising event where entertainment and other intangible benefits are provided. Accordingly, the public official attending an event must only report the value of the admission price charged to the members of the public as a gift from the charitable organization. The intangible benefits, such as flowers, tablecloths and entertainment are not a gift to the public official attending the event.

Reporting Obligations of a Business Entity

Any person who is a lobbyist employer under the definitions of the Act must report "activity expenses," which include gifts, honoraria, consulting fees, salaries, and any other form of compensation provided to certain public officials but do not include campaign contributions. (Section 86111.)

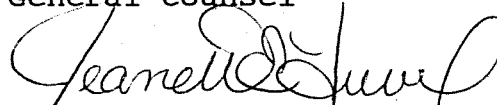
You have not provided information indicating your client is subject to the lobbyist employer reporting provisions. If your client is a lobbyist employer, your client would be subject to the lobbyist employer reporting requirements. However, since public officials attending an event described above do not report intangible benefits, the entertainment costs incurred by a lobbyist employer would not constitute a reportable activity expense.

Had our analysis determined that these intangible benefits were gifts reportable by the public official, Commission Regulation 18945 would provide guidance to determine who would be the donor of the intangible benefits. If a lobbyist employer had made a payment to a nonprofit charitable organization and directed and controlled the use of the payment to make a gift to one or more clearly identified officials, the lobbyist employer would be the source of a gift to the official or officials. Otherwise, the organization itself is the source of the gift. (Regulation 18954(a).)

I hope this information has been helpful to you. If you need further assistance, please feel free to contact the Commission's Legal Division at (916) 322-5901.

Sincerely,

Steven G. Churchwell
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

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