



# California Fair Political Practices Commission

December 8, 1993

Honorable Newton Russell  
Member, California State Senate  
State Capitol, Room 5061  
Sacramento, CA 95814

RE: Your Request for Advice  
Our File No. A-93-417

Dear Senator Russell:

You have requested advice concerning the gift provisions of the Political Reform Act (the "Act").<sup>1</sup>

#### QUESTION

If you stay at a resort owned by friends, does this constitute home hospitality which is exempt from the definition of "gift"?

#### CONCLUSION

If you stay at your friends' resort and do not pay the fair market value of the lodging, meals and other items provided to you, you will have received a gift. Your friends' entire resort facility is not considered their home for purposes of the "home hospitality" exception of the Act. Only meals and lodging provided to you at the cottage of the resort facility, which is your friends' home, are exempt from the definition of "gift."

#### FACTS

The facts described below were provided to Commission staff attorney Deanne Stone in a telephone conversation on August 24, 1993, an informational brochure subsequently sent to Ms. Stone, and your letter requesting advice dated October 26, 1993.

You stated that you, your spouse, and another couple have been invited by friends to visit them at an island in Fiji. The

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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, Sections 18000-18954. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

host couple owns and lives on the island, which has been developed as a resort facility.

The resort facility has six cottages, one of which is occupied by the owners. The other guest cottages are normally rented for \$995 per day per couple. In addition to use of a cottage, the fee includes limited air transportation and all expenses while on the island, such as food, drink, room, outboard motor boats, hobicats, fishing, etc.

You and your spouse wish to stay in one of the cottages not occupied by the owners of the island, rather than to stay in their cottage. The cottages have living and dining areas, and are approximately 1,000 square feet. Meals may be served in the cottages, or in a dining area shared by all guests.

#### ANALYSIS

Public officials are subject to reporting and disqualification requirements concerning gifts.<sup>2</sup> Furthermore, elected state officers may not accept any gifts which aggregate more than \$270<sup>3</sup> in value from any single source in any calendar year.

You are a Member of the California State Senate. Therefore, you are subject to the broadest disclosure under the Act, and the \$270 gift limit is applicable to all gifts which you receive, unless an exception from the definition of "gift" is applicable. (Sections 82028(b) and 87200.)

Regulation 18942(a)(7)<sup>4</sup> provides that the term "gift" does not include the value of gifts of hospitality, including food, beverages, or occasional lodging, provided by an individual in his or her home, to any public official when the individual or a member of the individual's family is present.

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<sup>2</sup> Public officials are required to disclose gifts aggregating \$50 or more in a calendar year, and are subject to disqualification requirements concerning donors of gifts which aggregate \$250 or more. (Sections 87207 and 87103(e).) A "gift" is defined as any payment to the extent that consideration of equal or greater value is not received. (Section 82028(a).)

<sup>3</sup> This gift limit amount has been adjusted from \$250 to \$270 pursuant to Sections 89504 and 89505. (Regulation 18954.)

<sup>4</sup> Regulation 18942, which renumbers Regulation 18727, has not yet been filed with the Office of Administrative Law. Regulation 18942 represents the Commission's policy concerning various exclusions from the definition of "gift," and it includes a "home hospitality" provision which is similar to Regulation 18727, which has been repealed.

You ask in your letter whether the entire resort facility may be considered your friends' home for purposes of the "home hospitality" exception. The exception may be applied if you are provided lodging and meals at the cottage occupied by your friends as their home.<sup>5</sup> However, in these circumstances, the exception does not extend to a separate cottage which is not occupied as a personal residence by your friends even though they own the cottage. Similarly, the exception would also not apply to any air transportation or other benefits included in the \$995 daily fee.<sup>6</sup>

The intent of Regulation 18942(a)(7) is to provide a limited exception from the definition of "gift" where occasional home hospitality is provided at an individual's personal residence. The "home hospitality" exception is not broad enough to include an entire resort facility as the host's "home."

We trust this letter provides you with adequate guidance. If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.<sup>7</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: Luisa Menchaca  
Counsel, Legal Division

Enclosures

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<sup>5</sup> The exception has also been applied to a person's vacation home, so long as the individual is present when the official stays at the vacation home. (Remcho Advice Letter, No. I-88-254.)

<sup>6</sup> Therefore, you would have to determine the value of any gifts, including food, at fair market value as of the date of receipt or promise of the gift. (Regulations 18941.1 and 18946, copies enclosed.)

<sup>7</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.