



California Fair Political Practices Commission

April 5, 1995

Thomas W. Hiltachk, Esq.
Bell, McAndrews and Hiltachk
555 Capitol Mall, Suite 530
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-95-020

Dear Mr. Hiltachk:

You have requested written advice on behalf of Capitol Network concerning the "gift" provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Is Capitol Network a "bona fide" association under Regulation 18945, the "source of gift" regulation?
2. When Capitol Network hosts a nonmember public official at an association event paid for from membership dues, is Capitol Network, or individual members, the source of a gift?

CONCLUSIONS

1. Yes. Capitol Network is a "bona fide" association under Regulation 18945.
2. If dues payments are used occasionally to host attendance of public officials at association events, the collection of the membership dues would not be considered to be for the "sole or primary" purpose of making gifts to public officials within the meaning of Regulation 18945(a)(2). Capitol Network would be considered the source of the gifts, not its dues-paying members.

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

FACTS

According to the information provided, Capitol Network has been in existence for over eight years. It is organized as a nonprofit entity under Section 501(c)(4) of the Internal Revenue Code. Capitol Network is a broad-based, nonpartisan association of government relations, administration, and legislative professionals. Its membership consists of approximately 100 women, including legislators, public officials, lobbyists, and nonlobbyists. Annual membership dues are \$100 for individual members and \$300 for corporate sponsors.

You state in your letter that Capitol Network raises funds through membership dues and sponsorship of special events for charitable organizations. You also stated in our conversation of January 27, 1995, that the membership dues are primarily used to facilitate Capitol Network's charitable fundraising activities and to pay for operational costs.

The information you provided states that the events hosted include two charitable fundraising events each year, a Mardi Gras Gala and a golf tournament. Additionally, Capitol Network organizes a springtime event with women legislators and a holiday party in December of each year.

The information also states that "Capitol Network sponsors fundraising and social activities throughout the year which allow its members to interact with one another and with members of the California State Legislature and Administration."

ANALYSIS

Bona Fide Association

You ask whether Capitol Network is a "bona fide" association for purposes of Regulation 18945.

Regulation 18945 provides in pertinent part:

(a) General Rule. A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.

(1) If a person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials, the person is the source of the gift to the official or officials.

(2) Dues. If a person pays dues or makes similar payments for membership in a bona fide association, including any federation, confederation, or trade, labor or

membership organization, some portion of which dues or similar payments are used to make gifts to officials, that person is not the source of the gifts to those officials. However, the person is the source of the gift if the sole or primary purpose of the dues or similar payments is to make gifts to officials.

In the lobbying context, we have applied the Sloan Opinion (1976) 2 FPPC Ops. 105 to determine whether an association is a "bona fide association." (Simmons Advice Letter, No. I-92-494; Regulation 18239.5.) We believe it is appropriate to apply the concepts of Sloan in this context as well.

In the Sloan Opinion, the Commission considered two factors as relevant in determining whether an organization is "bona fide." The two factors are: (1) whether it is ongoing in nature, and (2) does not include a short term coalition that is formed to support or oppose a single group of regulations. Capitol Network meets the requirements in Sloan. It has been organized for eight years and is currently a civic nonprofit league or organization incorporated under Internal Revenue Code Section 501(c)(4). Therefore, it is ongoing in nature. Moreover, its membership is diverse, and it is organized for civic and social purposes. Thus, it is not a short term coalition that is formed to support or oppose a single group of regulations or legislation, for example.

Membership Dues

You state in your letter that Capitol Network would like to host nonmember public officials to attend its events, without the value of the gift being attributed to the members. The Act defines "gift" to include "any payment to the extent that consideration of equal or greater value is not received...." (Section 82028(a).) This would include free admission to an event hosted by Capitol Network. Determining the source of the gifts in question necessarily requires a determination of whether the "sole or primary purpose" of the dues is to make gifts to public officials.

In adopting Regulation 18945(a)(2), the Commission codified existing staff advice, including the Harper Advice Letter, No. A-87-088.² In that letter, we previously advised Capitol

² Staff memorandum to Commission dated October 26, 1992, Discussion of Gift Regulations -- Adoption of Regulations 18945, 18945.1, 18945.4; Amendment of Regulation 18531.5. The memorandum also referred to the Brockman Advice Letter, No. I-91-096. There, we advised that if the dues or some portion thereof are received for the sole or primary purpose of making gifts to active members, an association would be considered an intermediary and the associate members would be considered the source of the gifts.

Network that the association was an intermediary and the dues-paying members would be the source of the gifts, where the dues from the membership were received for the sole purpose of making gifts to legislators. Under the facts stated in that letter, all of the dues collected were used to pay for two events during the year at which free meals were served to legislators. Capitol Network at the time had an honorary membership category which consisted of women legislators.

Under your facts, Capitol Network currently has two membership categories; individual and corporate membership. The honorary membership category for women legislators has been eliminated. However, while this third category for women legislators has been eliminated, it would necessarily lead to the same result if the association paid for officials' meals, golf fees, or provided other benefits to public officials on more than an occasional basis. Thus, for example, if women legislators were hosted at each of the Capitol Network events, the sole or primary purpose for the dues would be making gifts to officials within the meaning of Regulation 18945(a)(2).

I trust this letter has addressed your concerns. Should you have any further questions regarding this matter, please feel free to contact me at (916) 322-5901.³

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
Counsel, Legal Division

³ 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.