



# California Fair Political Practices Commission

April 5, 1995

Marshall S. Rudolph, Esq.  
Best, Best and Krieger  
39700 Bob Hope Drive, Suite 312  
Rancho Mirage, California 92270

Re: Your Request for Informal Assistance  
Our File No. I-95-059

Dear Mr. Rudolph:

This is in response to your request for informal assistance<sup>1</sup> on behalf of Cathedral City concerning the "gift" provisions of the Political Reform Act.<sup>2</sup>

Please note that the Commission does not act as the finder of fact in providing advice. Our letters are based on the facts presented to us. In addition, we do not provide advice regarding past conduct. (In re Oglesby (1975) 1 FPPC Ops. 71.)

## QUESTION

Is an interest-free loan a "gift" under the Act if it is made six months before an individual is appointed to fill a vacancy on a city council for purposes of the gift limits of Section 89501?

## CONCLUSION

Such a loan is not a "gift" under the Act. However, if there is any change in the terms of the loan, a gift would result equal to the differential amount between the interest free loan and the

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<sup>1</sup> 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).)

<sup>2</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.

fair market interest rate at the time of change in the terms of the loan. Such a gift would be subject to the applicable gift limitation amount of Section 89501.

#### ANALYSIS

You ask in your letter whether an individual who receives an interest-free loan from a friend, with no specific repayment term, six months prior to the time when that individual is appointed to a vacant city council position has received a gift for purposes of Section 89501.

Section 89501(b) provides in pertinent part:

(b) No local elected officeholder, candidate for local elected office, elected, appointed, or candidate for, member of the governing board of a special district, or designated employee of a local government agency shall accept any gifts, from any single source, which is in excess of two hundred fifty dollars (\$250),<sup>3</sup> in any calendar year, except reimbursement for actual travel expenses and reasonable subsistence in connection therewith.

An individual who is appointed to fill a vacant elective office is an elected officer. (Section 82020.) Therefore, an individual who is appointed to fill a city council seat is a local elected officeholder within meaning of Section 89501. The applicable gift limit of Section 89501 would apply at the time the individual is appointed to that office.

An interest-free loan provided to any public official,<sup>4</sup> including a local elected officeholder, constitutes a gift<sup>5</sup> under the Act to the extent that there is a differential amount between the interest free loan and the fair market interest rate at the time the loan is made. (Kamp Advice Letter, No. A-91-188.) However, an individual appointed to a local elective office is not subject to the strictures of the Act prior to the time he or she

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<sup>3</sup> For 1995 and 1996, the applicable gift limitation amount is \$280. (Sections 89501 and 89504, Regulation 18954.) In 1994, the applicable gift limitation amount was a combined gift and honorarium limit of \$1,000 per calendar year.

<sup>4</sup> "Public official" includes every member, officer, employee, or consultant of a state or local government agency. (Section 82048.)

<sup>5</sup> A "gift" means any payment to the extent that consideration of equal or greater value is not received. (Section 82028.)

becomes a public official. Therefore, under the hypothetical facts you have presented, a loan with such unspecified terms does not constitute a "gift" for purposes of the gift limits of Section 89501.

However, if there is any change in the terms of the loan, such as the establishment of a specified repayment period, a gift will result equal to the differential amount between the interest free loan and the fair market interest rate at the time of change in the terms of the loan. (Kamp Advice Letter, supra.) In 1995, such a gift would be subject to a gift limitation amount of \$280 from a single source. (Section 89501.)

Also, please note that an unpaid debt constitutes a loan and as such is considered reportable "income" under the Act. (Section 82030.) The full amount of the loan will be reportable in each calendar year that a balance of \$250 or more is outstanding. Moreover, the officeholder may not make, participate in the making, or influence a governmental decision if the decision will have a reasonably foreseeable and material financial effect, distinguishable from the effect on the public generally, on the friend who made the loan. (Section 87103.)

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.<sup>6</sup>

Sincerely,

Steven G. Churchwell  
General Counsel



By: Luisa Menchaca  
Counsel, Legal Division

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<sup>6</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.