

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

October 31, 1995

Donna Gould
Executive Director
Michael F. Dillon
and Associates Inc.
925 L Street, Suite 1400
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-95-320

Dear Ms. Gould:

You have requested advice on behalf of the California Veterinary Medical Association (the "Association") regarding the gift and lobbying provisions of the Political Reform Act.¹ Since your request seeks general assistance, we are treating your request as one for informal assistance.²

QUESTION

Will payments from the California Veterinary Medical Association, a lobbyist employer, to one of its veterinarian members to serve as legislative staff to a state legislator result in the making of a gift to the legislator to whom the Association member is assigned?

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 18000-18995. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Please note that 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

The payments may result in the making of a gift to the legislator from the Association, unless the requirements of Regulation 18944.2 are met.

FACTS

You are a lobbying firm. Your client, the California Veterinary Medical Association (the "Association"), is a lobbyist employer. The Association wishes to provide a one-year fellowship to one of its Association member veterinarians to perform legislative staff work for a member of the California Legislature. The member selected would be compensated between \$20,000 to \$30,000 by the Association during the one-year period.

The Association currently funds a similar fellowship program in Washington D.C. However, you are not certain how this program would be implemented in California; i.e., how the legislator to whom the member is assigned will be selected. You seek general guidance concerning the gift and other provisions of the Act to assist you in establishing the program.

ANALYSIS

The Act imposes certain obligations on public officials with respect to receipt of gifts. The term "public official"³ is broadly defined in the Act to include a member of the State Legislature. (Section 82048.)

The Act limits the acceptance by state legislators (and other officials) of gifts of more than \$280 in a calendar year from a single source. (Sections 89501-89505.) The Act also prohibits the making of gifts in excess of the gift limits. (Section 89521.) In addition, the Act:

- o Requires reporting of gifts received by legislators which total \$50 or more (Section 87207);
- o May require a legislator's disqualification with respect to the donor of gifts aggregating \$280 or more provided to, received by or promised to the legislator within 12 months prior to the time when a governmental decision is made (Sections 87102.5 and 87103);

³ Please note that the member of the Association may also be considered a "public official" for purposes of the Act. (Section 82048; Section 82019.) You have not asked us to analyze whether or not he or she would be deemed a "public official," nor his or her potential conflicts of interest under the Act concerning the Association or other economic interests. If you wish further advice on this, you should seek further assistance.

- o Requires lobbyist employers to disclose gifts made to legislative and state officials and to provide notice to those officials concerning reportable gifts (Sections 86112.5 and 86116); and

- o Prohibits lobbyists and lobbying firms from making or arranging for the making of gifts to legislators of more than \$10 in a calendar month (Section 86203).

Gifts to Public Officials

The question you raise is whether the payment for the member's compensation under the Association's program would constitute a gift to the legislator who benefits from the services provided.

A "gift"⁴ is defined as 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." (Section 82028(a).) A "payment" is defined as a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything of value, whether tangible or intangible. (Section 82044.)

Under Section 82028, anything of value given to a public official without cost, including professional services, may be a reportable gift, unless it is expressly exempted from the definition of gift. (See, e.g., Kolkey Advice Letter, No. I-95-134 and Connor Advice Letter, No. A-94-247, concerning legal services.)

Under some circumstances, however, a gift is deemed to be provided to a public official's agency, and not to the official. To determine whether a gift has been made to an official's agency, and not to the official who uses it, Regulation 18944.2(a) provides that the following criteria must be satisfied:

- (1) The agency receives and controls the payment.

⁴ The term "gift" does not include campaign contributions required to be reported under the provisions of the Act. (Section 82028(b)(4).) Section 82015 and Regulation 18215 define "contribution" to include any payment made for political purposes for which full and adequate consideration is not made to the donor. Pursuant to Regulation 18423(b), personal services are rendered for "political purposes" if they are carried on for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of one or more candidates. This does not appear applicable to your facts.

(2) The payment is used for official agency business.

(3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment. However, the donor may identify a specific purpose for the agency's use of the payment, so long as the donor does not designate the specific official or officials who may use the payment.

(4) The agency memorializes the payment in a written public record which embodies the requirements of subdivisions (a)(1) to (a)(3) of this regulation set forth above and which:

(A) Identifies the donor and the official, officials, or class of officials receiving or using the payment;

(B) Describes the official agency use and the nature and amount of the payment; and

(C) Is filed with the agency official who maintains the records of the agency's statements of economic interests where the agency has a specific office for the maintenance of such statements, or where no specific office exists for the maintenance of such statements, at a designated office of the agency, and the filing is done within 30 days of the receipt of the payment by the agency.

You would comply with the first requirement if the gift is received and controlled by the California Legislature, not by a specific legislator. The California Legislature is a permissible "agency" which may receive and control the payment. (Sections 82003 and 82041; Regulation 18944.2(a)(1).)

Presumably, the member will be performing official duties similar to those of other legislative staffpersons. Therefore, provided the activities are limited to the normal functions of a legislative employee, and the member is not compensated to lobby the Legislature on behalf of the Association, the second requirement stated in Regulation 18944.2(a)(2) would be met.

Finally, the California Legislature, in its sole discretion must determine the specific official or officials who shall use the payment. (Regulation 18944.2(a)(3).) Therefore, while you may identify the specific governmental purpose for the agency's use of the payment, presumably the establishment of the fellowship program to enable an Association member to learn the political and legislative processes, you cannot designate the specific legislator who shall use the services of the member.

Please note that if the program is set up in such a way that a gift results, your lobbying firm may not arrange for the making of the gift pursuant to Section 86203 noted above, since the member's compensation would range from \$20,000-\$30,000. Moreover, a gift from the Association⁵ to the legislator in excess of the \$280 gift limit would result.

If you have any further questions regarding this matter, please feel free to contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Luisa Menchaca
Counsel, Legal Division

⁵ As 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. (Regulation 18945.) However, 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. (Regulation 18945(b).) Therefore, if a gift to a legislator results, the Association would be considered the source of the gift since the Association would be directing and controlling the use of the payments.