

RAVI MEHTA
CHAIRMAN



FAIR POLITICAL PRACTICES COMMISSION

February 14, 1997

Joseph Hew Len
Office of Senator Teresa P. Hughes
State Capitol
Sacramento, California 95814

Re: Your Request for Advice
Our File No. A-97-026

Dear Mr. Len:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act"),¹ on behalf of Senator Teresa Hughes. Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. Further, this letter is based on the facts you have presented to us. The Commission does not act as finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

When a potential donor of tickets to a sporting event writes to Senator Hughes, offering to send the tickets to the Senator or, on request, to her family or staff, would the Senator be regarded as the recipient of a gift if she requested that the tickets be sent for her own use, the use of her family members, or for use by her office staff? Would the identity of the recipient be determined by how the donor reported the gift? Finally, if certain staff are not required to file an annual Statement of Economic Interests, you ask if they are nonetheless subject to the same limitations regarding gifts as are public officials with specific reporting obligations.

CONCLUSIONS

If the Senator herself requests tickets, she will become the legal recipient of the gift if she uses them herself, or if she exercises discretion or control over who shall actually use them. If she does not wish to become the recipient of gift tickets used by her family or staff, she must make no response to the Pacific Telesis letter, and must not authorize family or staff to request that the tickets be sent to them for their own use. In answer to the second question,

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18110 - 18994, of the California Code of Regulations.

that the tickets be sent to them for their own use. In answer to the second question, determination of the legal recipient is governed by specific regulatory criteria, which are not affected by the manner in which the donor reports the gift. Finally, office staff who are not required to file an annual Statement of Economic Interests are not bound by the Act's annual single-source gift limitation, but they must not participate in or influence any governmental decision foreseeably having a material financial effect on the donor of gifts valued in excess of \$250 in any 12 month period.

FACTS

On December 30, 1996, Pacific Telesis sent a letter to Senator Teresa Hughes, offering to the Senator, her family and staff four season tickets to Sacramento Kings games. The letter noted that the value of the tickets was \$52.00 each, and went on as follows:

“As a lobbyist employer, Pacific Telesis is required to report gifts made to public officials, including legislators and their staff, and their immediate family members. Tickets requested specifically for use by your family or staff will be reported as gifts to them, as appropriate. Otherwise, a ticket requested by a public official must be reported as a gift to the official who made the request, even if used by another person. Please notify me if the tickets received are not used, since unused tickets need not be reported.

Attached is a copy of the game schedule. These tickets are distributed on a “first come, first served” basis. Persons who wish to receive tickets should call me directly or fax their ticket requests to me at [sender's fax number].”

ANALYSIS

The Political Reform Act was enacted by the people of the State of California through the initiative process in 1974. The purpose for the disclosure and disqualification provisions of the Act was to insure that public officials, whether elected or appointed, would perform their duties in an impartial manner, free from bias attributable to their own financial interests or the interests of persons who have supported them. (Section 81001(b).)

As a member of the California Senate, Senator Hughes is a “public official” within the meaning of the Act (Section 82048) and, as a public official, she is required to disclose all economic interests that could foreseeably be affected by the conduct of her official duties. (Sections 81002(c); 87200-87313). Among the financial interests required to be disclosed are the sources of any gifts of \$50.00 or more in value. (Section 87207(a)(1).)

Regulation 18944 (copy enclosed) states in general terms how and when a public official will, or will not, be deemed to have received a reportable gift. As indicated by this regulation, if the Senator were to call and request tickets for herself, and used them herself, she would be the recipient of a gift.² If the Senator asked that the tickets be sent to her, but then distributed them among her family and staff, she would *still* be regarded as the recipient of gifts equal in value to the total value of the tickets, whether or not she actually used any herself, since she will have exercised discretion and control over who used the tickets. See, e.g. *Bagatelos* Advice Letter, No. A-93-309/A-93-441, at pages 8-9.

By its language, the Pacific Telesis letter may be read to suggest that, instead of responding herself, the Senator might advise members of her family or staff to respond on their own behalf, requesting that the tickets be sent addressed to them, and not to the Senator. At least for members of her immediate family, such a procedure would appear to satisfy the requirements on Regulation 18944(b), which provides that gifts sent through the mail directly to family members are gifts to them alone. But under the circumstances you describe, we cannot escape the conclusion that, by permitting selected persons to respond in her stead, the Senator would still be exercising control over who ultimately would take and use the tickets. Regulation 18941 (copy enclosed) provides at subsection (a):

“(a) Receipt or Acceptance of a Gift. Except as otherwise provided in this section or in California Code of Regulations, Title 2, Section 18943, a gift is “received” or “accepted” when the recipient knows that he or she has either actual possession of the gift or takes any action exercising discretion or control over the gift.”

This regulation states unambiguously that a gift is received when the recipient exercises *any* control over it. Any step the Senator might take in “routing” the gift towards any particular individual is an exercise of “control” that, under Regulation 18941, would make the Senator herself a recipient of the gifts distributed at her discretion. In short, only by *not* making and *not* authorizing any response can the Senator avoid being classed as the recipient of the gifts on offer in the Pacific Telesis letter.

You have also asked whether Pacific Telesis can control determination of the legal recipient by the manner in which the gift is reported. The answer is “no”. The criteria under which the legal recipient is determined are those given in Regulations 18941 and 18944, which cannot be altered by the manner in which a donor may choose to fulfill its reporting obligations.

² The value of a ticket, whether for single or repeated admissions, is determined as indicated in Regulation 18946.1 (copy enclosed). The Pacific Telesis letter reports the value of each ticket at \$52.00, and for purposes of this advice letter we shall presume that to be true. You must, however, determine this value for yourself, after inspection of the tickets and consultation of Regulation 18946.1.

Finally, as you clarified for me in our telephone conversation of January 29, 1997, you ask whether office staff, who are not required to file a Statement of Economic Interests, may nevertheless be bound by the same gift restrictions applicable to persons who *are* required to file these annual statements.

Section 89503 limits the amount of gifts to elected state officials, candidates, members of state boards or commissions, and designated employees of state agencies (if the member or employee would be required to report the receipt of income or gifts on his or her Statement of Economic Interests). The office staff you refer to are not candidates, elected officials, boardmembers or designated employees required to file a Statement of Economic Interests, and are not therefore subject to the single-source gift limits of Section 89503. Nor are they, by definition, subject to the reporting obligations affecting designated employees or other officials.

Please bear in mind, however, that employees of any state office or agency, even if not "designated" employees, are *still* "public officials" within the meaning of the Act. As such, they may be in a position to violate Section 87103(e), if they have occasion to participate in or influence any governmental decision foreseeably having a material financial effect on the donor of substantial gifts to them.

If you have any other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Steven G. Churchwell
General Counsel



By: Lawrence T. Woodlock
Staff Counsel, Legal Division

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