



## FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807

(916) 322-5660 • Fax (916) 322-0886

December 21, 2000

Ed Robey, Supervisor  
County of Lake  
Courthouse  
255 No. Forbes Street  
Lakeport, California 95453

**Re: Your Request for Advice  
Our File No. A-00-266**

Dear Supervisor Robey:

This letter is in response to your request for advice regarding the provisions of the Political Reform Act (the "Act")<sup>1</sup> regulating the receipt of gifts and honoraria.

### QUESTION

May you accept free roundtrip transportation to and lodging in Hawaii provided by Guenoc and Langtry Estate Vineyard and Winery for the purpose of making a speech at the Langtry Educational Retreat?

### CONCLUSION

Travel in connection with a speech given by a local elected officeholder and the lodging and subsistence expenses for the day immediately preceding, the day of, and the day immediately following the speech, are exempt from the gift limits of the Act. However, these gifts are reportable and may subject you to disqualification responsibilities under section 87100. In addition, free admission, refreshments, and similar non-cash nominal benefits provided during the entire event at which you give a speech are not payments and need not be reported. The gift to your spouse or guest is considered an additional gift to you and is subject to the gift limits of the Act and the disclosure and disqualification rules if you direct or control the use of the gift.

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<sup>1</sup> Government Code sections 81000 – 91015. Commission regulations appear at Title 2, sections 18109-18996, of the California Code of Regulations.

## FACTS

You are the District 1 County Supervisor in Lake County. A large winegrape grower/winery in your district has invited you to come to their annual corporate education retreat to speak at a seminar on the topic, "The Wine Industry in Lake County."

The offer is from the Guenoc and Langtry Estate Vineyard & Winery, located on the old Guenoc ranch in southern Lake County. The parent company is Magoon Estates Limited, based in Hawaii. Orville Magoon has asked you to participate as a speaker (along with the Director of the Lake County Winegrape Commission) at the annual Lantry Educational Retreat on the island of Hawaii in February 2001. This retreat is held for the top distributors of Guenoc and Langtry wines, and you see this as an opportunity to promote the wine industry in Lake County. These distributors handle wines from all over the world, and you have been asked to tell them about the advantages of growing winegrapes in Lake County. You have been very active with other members of your Board in developing environmentally responsible and business friendly land use policies designed to expand the winegrape industry in your county. You see this as an economic development opportunity for Lake County. You are actively trying to attract premium quality wine growers and wineries to your county, and these wine distributors are a conduit through which to transmit the message that Lake County has the soil, climate and agriculturally friendly land use policies which make it the best place to grow premium quality winegrapes and make premium quality wines in California.

Mr. Magoon has offered to pay all expenses to fly both you and a spouse/guest to this event, and you would very much like to accept his invitation.

## ANALYSIS

### 1. Your Travel and Accommodations

First, we must determine whether those payments are income or gifts. Section 82028 defines a "gift" as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received...." In limited situations, payments for travel may constitute "income" to an official if the official provides equal or greater consideration in return. However, we have concluded that merely giving a speech does not constitute providing equal or greater consideration for travel payments. (*Allen* Advice Letter, No. A-96-181.) Since you have not stated that you will provide any other consideration besides giving a speech, we characterize the travel payments you will receive as gifts. Next we must consider the gift limits and the honoraria ban. (Sections 89502 and 89503.)

The Act prohibits elected officers of local government agencies from receiving honoraria. Section 89501(a) defines honoraria as "any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering." However, subsection (c) of

section 89501 states that "Section 89506 shall apply to all payments, advances, or reimbursements for travel and related lodging and subsistence." Section 89506 provides:

"(a) Payments, advances, reimbursements, for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose, or to an issue of state, national or international public policy, are not prohibited or limited by this chapter if either of the following apply:

"(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, *the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech, and the travel is within the United States.*" [Emphasis added.]

Thus, pursuant to section 89506(a)(1), payments for actual transportation, as well as for lodging and subsistence expenses limited to the day immediately preceding, the day of, and the day immediately following the speech, are not limited nor prohibited by the honoraria ban or the gift limit. Payment for lodging and subsistence on any other day would be considered a gift subject to the gift limits of the Act. The current gift limit is \$300, but will be increased to \$320 on January 1, 2001. (Section 89503(a); Reg. 18940.2.)

Please note, even if the payments fall in the exception in section 89506(a)(1), they are still gifts and you must still report the travel payments received in connection with the speeches you gave as gifts on your statement of economic interests. (Sections 87200, 87203, and 87207(a).) Further, these gifts from Guenoc and Langtry Estate Vineyard and Winery must be considered in determining whether you will have a conflict of interest in a decision affecting Guenoc and Langtry Estate Vineyard and Winery.<sup>2</sup>

However, regulation 18950.3 provides an additional limited exemption from *both* the gift limits *and* gift reporting requirements for the meals, beverages, and other nominal benefits you receive on the day of your speech. Regulation 18950.3 provides:

"Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service, and actual intrastate transportation and any necessary lodging and subsistence

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<sup>2</sup> For your information, we have enclosed a fact-sheet discussing the conflict of interest rules under the Act entitled: "Can I Vote? Conflict of Interest Overview."

provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, are not payments and need not be reported by any filer.”

Under this regulation, payments for meals, beverages, and other nominal benefits received by you directly in connection with your speech are not subject to gift limits and are not reportable on your statement of economic interests. The exclusion for meals and beverages under this regulation is limited to those provided on the day of your speech.

## 2. Your Spouse's Travel and Accommodations

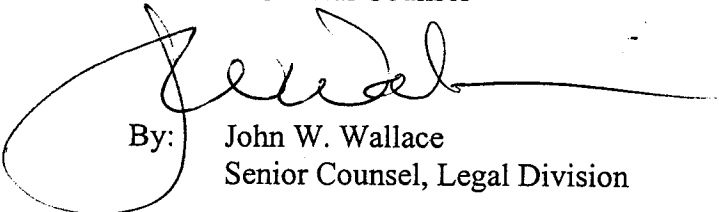
The exceptions described above do not apply to the additional gift of transportation to your spouse or guest. Regulation 18941 provides, in pertinent part, that the recipient of a gift is the person who actually receives or accepts the gift. Since you direct the gift of travel to your spouse or guest, you will be considered the recipient of the gift of travel for purposes the gift limits of the Act, as well as the disclosure and disqualification requirements in section 87100 et seq.<sup>3</sup> Thus, this gift (when aggregated with all other gifts from Guenoc and Langtry Estate Vineyard and Winery not otherwise exempt) may not exceed \$320 in calendar year 2001. (Section 89503(a); Reg. 18940.2.)

Please note, pursuant to regulation 18942(a)(4), an official may reimburse a donor of gifts the amount of the gift that exceeds the gift limit within 30 days of the receipt or acceptance of the gift.

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

Sincerely,

Luisa Menchaca  
Assistant General Counsel

  
By: John W. Wallace  
Senior Counsel, Legal Division

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Enclosure  
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<sup>3</sup> In the case of immediate family members, exceptions to this rule are found in regulation 18944. That regulations provides, in subsection (c), that: “[a] gift given to the official, but designated for the official and spouse or family, is a gift to the official if the official exercises discretion and control over who will actually use the gift.” You have not described how the additional gifts of travel were designated.