



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

April 24, 2002

Kathleen Walsh, General Counsel
Air Resources Board
Post Office Box 2815
Sacramento, CA 95812

**Re: Your Request for Informal Assistance
Our File No. I-01-270**

Dear Ms. Walsh:

This letter is in response to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ Since you have not named a specific public official on whose behalf you are requesting this advice, we can only provide you with informal assistance in response to your questions.²

QUESTIONS

1. Do the gift provisions of the Act prohibit California Air Resource Board ("CARB") employees and officials from applying for and receiving Zero Emission Vehicle ("ZEV") grants issued by the State of California?
2. If CARB employees and officials are eligible to receive ZEV grants, must a recipient employee or official report the grant on his or her annual Statements of Economic Interest ("SEI")?

CONCLUSIONS

1. As discussed below, the gift provisions of the Act are not applicable to ZEV grants; therefore, the Act does not prevent CARB employees and officials from applying for and receiving ZEV grants.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3) – copy enclosed.)

2. A ZEV grant received by an CARB employee or official does not constitute reportable income or a gift and need not be shown on his or her annual SEI.

A ZEV grant received by an CARB employee or official would comprise an element of his or her personal finances and, for that reason would be an economic interest to the recipient for purposes of the conflict-of-interest provisions of the Act (regulation 18703.5). For that reason, an CARB employee or official who is planning to apply for, or has received, a ZEV grant may have a disqualifying conflict-of-interest prohibiting that official from making, participating in making, or influencing certain of CARB's governmental decisions implicating the ZEV grant program.³

FACTS

CARB is the state agency charged with coordinating efforts to attain and maintain ambient air quality standards, to conduct research into the causes of air pollution, and to systematically attack motor vehicle-derived air pollution. One component of CARB's efforts to control air pollution from motor vehicles is the requirement that a certain percentage of new vehicles sold or leased in California be ZEVs, beginning in the year 2003.

At present, a ZEV costs substantially more to lease or buy than an equivalent internal-combustion vehicle. To encourage the lease and purchase of ZEVs, the California Legislature enacted (and the Governor signed) AB 2061 (Statutes 2000, Chapter 1072), adding sections 44260-44265 to the California Health and Safety Code. This legislation provides for grants of up to \$9,000 over a 3-year period (up to \$3,000 per year) to be given to qualified buyers and lessees of qualifying ZEVs. As the lead agency charged with administering this statute, CARB has adopted guidelines to implement the grant program.

AB 2061 provides that the grants may be given to "individuals, local governments, state agencies, nonprofit organizations, and private businesses." Under this legislation, the grant goes from the state to the buyer or lessee of the vehicle. A buyer or lessee also has the option of assigning the grant to the vehicle dealer/lessor. An individual seeking to apply for a grant must receive delivery of a ZEV before making application. Once the application is approved, monies under the grant are disbursed in the form of a check drawn on the state treasury. The check is provided to the recipient in company with IRS Form 1099, "statement of miscellaneous income".

The grants are available to the general public on a "first come, first served" basis as long as funds remain available. CARB, along with other public agencies such as the California Energy Commission and the Bay Area Air Quality Management District, has conducted a number of outreach activities to make the general public aware of the availability of the grants. CARB also maintains a web site with information about this and other aspects of CARB's ZEV program (<http://www.zevinfo.com>).

³ Significantly, CARB is the agency charged with implementing the ZEV grant program.

CARB employees have expressed interest in applying for these grants. CARB requests advice on whether its employees and officials may apply for these grants without running afoul of the gift prohibitions of the Act.

ANALYSIS

1. Do the gift provisions of the Act prohibit CARB employees and officials from applying for and receiving ZEV grants?

The Act provides that “[n]o member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than [three hundred twenty (\$320)] if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.” (Section 89503(c).) A gift is defined as:

“ . . . any payment that confers a personal benefit on the recipient, 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).)

The nature of the payment made pursuant to a ZEV grant is one akin to a rebate, albeit in this case the rebate is provided by the state, rather than the manufacturer or seller of the merchandise. The legislation creating the payment states that the purpose of the grant is to help offset the cost differential between ZEVs and vehicles powered by a standard internal combustion engine and make the costs to the buyer roughly equivalent. The method of computing the amount of a grant to a particular buyer recognizes this incremental cost differential and would pay back a purchaser or lessor for approximately 90 percent of this differential. (Health and Safety Code § 44261.) Essentially, the ZEV grant is a percentage of the purchase or lease price and varies in total amount according to cost to the recipient of the vehicle acquired.

In addition, monies under a grant are disbursed in a manner consistent with a rebate. Specifically, to qualify for a ZEV grant, a potential recipient must first accept delivery of the ZEV⁴ much the same as an individual or entity must first purchase an item before being entitled to a rebate. Upon approval of a grant request, the recipient receives payment from the state. The recipient can use the payment to reimburse himself or herself for the recipient’s outlay of funds for the ZEV. Alternatively, the recipient may assign the payment to the provider (seller or lessor) of the ZEV, consistent with the pre-delivery financial arrangements between the parties.

⁴ Presumably, the ZEV will not be delivered unless the recipient has paid for, or entered into a legally enforceable agreement (such as an installment sales contract) to pay for, the ZEV, be it a purchase or lease.

Although called a “grant” within the legislation, it is clear from the legislative purpose, eligibility criteria, method of calculating a specific award, and the manner in which funds under a grant are disbursed, that the monies are received as a rebate.

The ZEV grants are being offered in the regular course of state business, that is to say, pursuant to legislation enacted by the legislature and signed into law by the Governor. CARB, as the administrator of the grant program has drawn up implementing regulations and publicized by various means the availability of the grants. The program is part of the state’s longstanding comprehensive policy to address air quality standards within attainment districts. The grants are broadly available, with eligibility extended not only to all individual members of the public, but also to state and local government agencies, non-profit entities and private businesses. Grants are awarded on a first-come, first-served basis; there is no priority given in either eligibility or award based on an applicant’s official status.

Therefore, we conclude that ZEV grants qualify under the “rebate” exclusionary language of Section 82028(a) and do not constitute gifts, within the meaning of the Act.

2. If CARB employees and officials are eligible to receive ZEV grants, must a recipient employee or official report the grant on his or her annual SEI?

Income under the Act is defined to mean any payment received, including, among other items, gifts. (Section 82030(a).) Under section 82028(a), a rebate is considered to be a gift, and hence reportable under the separate reporting standards applicable to gift income (section 87207(a)(1)), unless the exclusionary language of section 82028(a), discussed above, applies. In this instance, the exclusion applies so that ZEV grants are not gifts and would not be reportable as gift income.

3. Effect on Personal Finances and Potential Conflict of Interest

Although you do not inquire in this regard, we note that ZEV grants received by a state employee would constitute a component of his or her personal finances. Under the Commission’s conflict-of-interest regulations, a public official⁵ has an economic interest in his or her personal finances and those of his or her immediate family. (Regulation 18703.5.) Accordingly, a ZEV grant could become a potential basis for disqualifying an CARB employee or official from making, participating in making, or influencing governmental decisions of CARB relating to the ZEV grant program.

The general rule under the conflict-of-interest provisions of the Act is that a public official is prohibited from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest. Under regulation 18705.5(a), if a governmental decision can reasonably be foreseen as having an impact of \$250 or more over a 12-month period

⁵ A public official is defined as a “member, officer, employee or consultant of a state or local government agency”. (Section 82048; regulation 18702(a).)

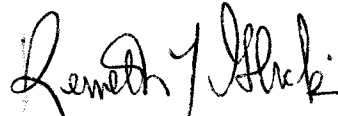
upon a public official's personal finances, generally the official may not be involved in that decision.

Given that ZEV grants may total up to \$9,000, it is reasonable to assume that a ZEV grant recipient would receive at least \$250 per year, over the three-year life of the grant. Therefore, if an CARB employee or official is planning to apply for a ZEV grant, he or she could have a potential disqualifying conflict of interest if the nature of his or employment with CARB would involve the employee/official in governmental decisions directly or indirectly involving the ZEV grant program. Such employees or officials may wish to seek our written advice regarding the conflict-of-interest provisions of the Act and how those provisions may apply in their circumstances.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Kenneth L. Glick
Counsel, Legal Division

KLJ:jg

I:\AdviceLtrs\A-01-270