



FAIR POLITICAL PRACTICES COMMISSION

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February 28, 2003

Lisa A. Foster
Deputy City Attorney
City of San Diego
1200 Third Avenue, Ste. 1620
San Diego, CA 92101-4199

**Re: Your Request for Advice
Our File No. A-03-014a**

Dear Ms. Foster:

You have requested advice on behalf of San Diego City Attorney Casey Gwinn and several unidentified city officials concerning the gift provisions of the Political Reform Act (the "Act").¹ Our advice is based on the facts presented; the Fair Political Practices Commission ("Commission") does not act as a finder of fact when it provides advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

On February 11, 2003, we issued an advice letter in response to your advice request, based on the facts provided in your letter and the facts obtained from your office. On February 19, 2003, we received your letter correcting the facts that we received from your office. Specifically, you noted that Mr. Gwinn bought tickets to the Super Bowl, as presented in question one, but did not attend the NFL "Take Flight" party as presented in question two.²

Consistent with the revised facts you have provided, the second section of our advice letter has been modified to remove references to Mr. Gwinn. Additionally, only the response to question one concerning Mr. Gwinn is formal advice. The discussion under the second question in this letter should be considered only *informal assistance*. 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), copy enclosed.) We have considered your concerns in your letter of

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

² You also noted a typographical error which has been corrected in this revised version.

February 19, 2003, however, the conclusion and analysis are correct and remain unchanged.

QUESTIONS

1. Did Mr. Gwinn receive a gift when he purchased Super Bowl tickets at their face value from the National Football League ("NFL") if a secondary market existed for the tickets with a resale value higher than the face value?
2. What is the value of the gift received by other city officials who attended a party for which there was no admission charge, but for which there was a secondary market for the admission tickets with a resale value higher than the face value?

CONCLUSIONS

1. No. Because Mr. Gwinn purchased the tickets at face value, which was the price charged members of the public, he did not receive a gift.
2. The value of an admission ticket to a party where there is no stated admission charge is the cost to the donor, if the cost is known or ascertainable.

FACTS

The Super Bowl was held on Sunday, January 26, 2003, at Qualcomm Stadium, which is a city-owned facility located in the City of San Diego. Mr. Gwinn was offered the opportunity to purchase game tickets from the National Football League for face value; the price the NFL charges members of the general public for the tickets. You stated that depending on the tickets purchased, the face value was either \$400 or \$500 per ticket. A secondary market for the tickets existed with resale values higher than the face value of the tickets.

In addition, on Friday, January 24, 2003, the NFL hosted a party called "Take Flight," also known as the "Commissioner's Party." The party was a private, invitation only party with no admission price, and took place at the Marine Corps Air Station Miramar. The NFL sent various city officials an admission ticket that had no stated face value. According to the NFL, the actual cost of food and drink per person for this party was approximately \$100. A secondary market existed for these admission tickets, and some were sold on the secondary market for hundreds of dollars apiece.

ANALYSIS

The Act imposes different obligations on public officials regarding the receipt of gifts. First, the Act requires that every public official disclose his or her economic interests (including sources of gifts) that could foreseeably be financially affected by the exercise of the official's duties. (§§ 81002(c), 87207 and 87302.) Second, § 87100

requires that public officials disqualify themselves from any governmental decision that will have a foreseeable and material financial effect on a donor of gifts provided to, received by, or promised to the public official within 12 months prior to the time the decision is made. (§ 87103(e).) Third, section 89503 imposes a limit on gifts received by public officials from sources they are required to disclose.³

As a public official identified in § 87200, Mr. Gwinn is subject to the broadest requirements for disclosing gifts. Although there are exceptions, such as for gifts received from family members, Mr. Gwinn must disclose gifts aggregating \$50 or more in a calendar year received from any single source. Other city officials who are not identified in § 87200 may be subject to the Act's disclosure requirements and gift limit if they are designated in a conflict of interest code adopted by their agency or the city. (§ 87300, et seq.)

Section 82028 defines the term "gift:"

"(a) 'Gift' means, except as provided in subdivision (b), 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. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(b) The term 'gift' does not include:

(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed 'informational material.'

(2) Gifts which are not used and which, within 30 days after receipt, are either returned to the donor or delivered to a nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code without being claimed as a charitable contribution for tax purposes.

(3) Gifts from an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person; provided that a gift

³ The gift limit is adjusted on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index. For calendar years 2003 and 2004, the limit is \$340 from a single source in a calendar year. (See § 89503(f); regulation 18940.2.) This also is the threshold at which disqualification is triggered based on the receipt of gifts. (§ 87103(e).)

from any such person shall be considered a gift if the donor is acting as an agent or intermediary for any person not covered by this paragraph.

- (4) Campaign contributions required to be reported under Chapter 4 of this title.
- (5) Any devise or inheritance.
- (6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).”

Other exceptions to the term “gift” are set out in regulation 18942. In most cases, food and drink received by a public official are considered gifts. (Regulation 18941.1.)

Super Bowl Tickets

According to your letter, Mr. Gwinn and other city officials were given the opportunity to purchase Super Bowl tickets for \$400 or \$500, depending on the type of ticket purchased. This was the price stated on the ticket and the amount the NFL charged members of the general public.

Because the purchase price offered to city officials was the same as that charged members of the public, Mr. Gwinn provided equal or greater value for the tickets he purchased and was not granted a discount or rebate based on his official status. Thus, he has not received a gift in connection with the purchase of Super Bowl tickets despite the fact that a secondary market existed at which tickets were sold at a higher price. The Commission has advised that a discount provided to public officials need not be made available to all members of the public as long as the discount is made available on a uniform basis to a diverse group and is not based on the recipients’ official status. (*In re Russel* (1975) 1 FPPC Ops. 191.)

Consistent with this conclusion, we also note that the general rule for valuing a gift in the form of a ticket which provides a one-time admission to an event such as the Super Bowl is the face value of the pass or ticket. (Regulation 18946.1(a).)

“Take Flight” Party

The general rule for valuing unique gifts, or those with no face value, is set out in subdivision (b) of regulation 18946:

“Whenever the fair market value cannot readily be ascertained because the gift is unique or unusual, the value shall be the cost to the donor, if known or ascertainable. If the cost to the donor is unknown and unascertainable, the recipient shall make a reasonable approximation. In making such an approximation, the recipient shall take into account the price of similar items. If

similar items are not available as a guide, a good faith estimate shall be utilized.”

According to your facts, various city officials received tickets to the pre-game party from the NFL. The tickets had no face value and although the NFL has estimated the cost of food and drink for the party at \$100 per person, a secondary market existed at which tickets were sold for hundreds of dollars apiece. Under regulation 18946(b), these officials received a gift valued at the cost to the NFL for each ticket that he or she used or passed on to another person.⁴ To determine the value of gifts received at events such as the pre-game party, the Commission has advised that payments for rental of the facility, decorations, entertainment, and other tangible benefits must be counted in addition to payments for food and beverages. (*Eichman Advice Letter*, No. A-84-098; *Sutton Advice Letter*, No. I-91-347.)

Reimbursed Gifts

To the extent an official receives a gift(s) that exceeds the gift limit, or the official prefers not to disclose, regulation 18943 provides that an official may reimburse the donor for the value of a gift. If the reimbursement is made within 30 days of receipt, the official has not received a gift. Alternatively, an official may, within 30 days, reimburse the donor the amount that exceeds the gift limit or that brings the value of the gift below the \$50 reporting threshold. Subdivision (b)(2) of § 82028 and regulation 18943 also provide for the return or donation of unused gifts within 30 days of receipt.

I trust this adequately addresses your questions. Please contact me if you need further assistance.

Sincerely,

Luisa Menchaca
General Counsel



By: Carla Wardlow
Division Chief
Technical Assistance Division

Enclosure
LM:CW

⁴ If an official received more than one ticket from the NFL, he or she must aggregate their value to determine the amount of the gift received, unless the tickets were not used. For example, if an official received two free tickets from the NFL valued at \$150 each, used one ticket and gave the other to another person, the official received a gift valued at \$300. (Regulation 18946.1.)