



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

March 5, 2003

Clark H. Alsop
Best Best & Krieger, LLP
Post Office Box 1028
Riverside, CA 92502-1028

**Re: Your Request for Advice
Our File No. A-03-032**

Dear Mr. Alsop:

This letter is in response to your request for advice on behalf of Fontana City Councilmember Janice Rutherford regarding the conflict-of-interest and gift provisions of the Political Reform Act (the "Act").¹

QUESTIONS

1. Is Councilmember Rutherford required to report personal gifts she receives from David Lewis, with whom she has a dating relationship, on her statement of economic interests?
2. Since the only economic interest Ms. Rutherford has in Mr. Lewis is personal gifts, does Mr. Lewis create a potential conflict of interest for Ms. Rutherford?

CONCLUSIONS

1. & 2. As you indicated in your letter, gifts received in a bona fide dating relationship and of a purely personal nature are not reportable and will not create a conflict of interest. Therefore, Ms. Rutherford is not required to report on her statement of economic interests gifts she receives from Mr. Lewis in their dating relationship, nor will these gifts be considered a possible conflict of interest for her in either position she holds.

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

FACTS

Councilmember Rutherford was elected to the Fontana City Council in 2000. In addition, she is employed by the State of California as a public affairs director for Bill Leonard of the State Board of Equalization. She is, therefore, also subject to the Act as a state employee. In late October 2002, Councilmember Rutherford began a dating relationship with David Lewis. Mr. Lewis is a member of a family which owns and operates the Lewis Group of Companies ("Lewis Group"). The Lewis Group generally engages in residential and commercial building and development and owns real property, some of which is located in the City of Fontana. The Lewis Group, from time to time, seeks approval from the city council for development projects. Councilmember Rutherford receives personal gifts from Mr. Lewis. These personal gifts are not related to Councilmember Rutherford's official positions and arise solely from the personal dating relationship between her and Mr. Lewis. Councilmember Rutherford has no other financial relationship with Mr. Lewis or the Lewis Group.

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. (Sections 81002(c), 87207, and 87302.) Second, section 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 when the decision is made. (Section 87103(e).) Third, section 89503 imposes a limit on gifts received by public officials from sources they are required to disclose.²

A gift is defined in section 82028 as:

"...any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received"

Section 82028 also provides exceptions to the definition of a gift. A pertinent exception states:

"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 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."

² 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 section 89503; regulation 18940.2.) This also is the threshold at which disqualification is triggered based on the receipt of gifts. (Section 87103(e).)

As you state in your letter, the Commission has further clarified this exception to include anyone with whom the public official has a "bona fide" dating relationship.

"In such a relationship, truly personal gifts, such as gifts of entertainment, meals, personal property or expenses involved in recreational travel, need not be disclosed on an official's Statement of Economic Interests. Such a relationship is similar to a family or spousal relationship, in which personal gifts are frequently exchanged, and in which disclosure of the gifts would not further the purposes of the Act." (*Shea* Advice Letter, No. A-84-085.)

Thus, as long as the gifts Councilmember Rutherford receives from Mr. Lewis are strictly personal and not payments or loans to the council member in the context of a business (*Shea* Advice Letter, *supra*), and as long as she has no other financial interest in Mr. Lewis, Councilmember Rutherford is not required to report gifts she receives from Mr. Lewis, nor is she required to recuse herself from making or participating in making governmental decisions which may have a material financial affect on Mr. Lewis. In addition, the value of the gifts she receives from Mr. Lewis is not subject to limit.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Kevin S. Moen, PhD
Political Reform Consultant II
Technical Assistance Division

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