



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

July 6, 2004

W. Dale Harvey
824 Stanford Avenue
Clovis, California 93611

Re: Your Request for Informal Assistance
Our File No. I-04-097

Dear Mr. Harvey:

This letter is in response to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ Because your question concerns past conduct, we are treating your letter as a request for informal assistance. The Fair Political Practices Commission (the "Commission") does not provide advice relating to past conduct. (Regulation 18329(b)(8)(A) - copy enclosed.) However, in circumstances involving past conduct, the Commission will provide a general explanation of the requirements of the Act where the "assistance sought is related to possible amendment of previous reports filed by the person requesting the advice." (Regulation 18329(c)(4)(A).) In addition, the Commission does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. Are you prohibited under the Act from accepting a gift of more than \$340 from your girlfriend?
2. Is a gift from your girlfriend reportable?
3. If the gift is reportable, do you need to amend your Form 700 to list the gift even if it has been returned?

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

CONCLUSIONS

1. - 3. Gifts of a personal nature received in a "bona fide dating relationship" are not subject to the reporting or gift limitation provisions of the Act.

FACTS

You work for the Central Valley Regional Water Quality Control Board (State Water Resources Control Board) as a senior water resources control engineer. Your jurisdiction is statewide. Your position is designated in your agency's conflict of interest code and your disclosure category is category 1.

On October 15, 2003, your girlfriend of over two and one-half years gave you a personal gift of \$8,000.00. She is not subject to regulation by your employer. You returned the gift to her with interest on May 1, 2004.

ANALYSIS

Gift Disclosure: Among the Act's gift provisions are those requiring the disclosure of certain gifts. Public officials enumerated in section 87200 and employees who are designated in an agency's conflict of interest code as required by section 87300, must disclose certain economic interests, including gifts, on the employee's Form 700, "Statement of Economic Interests." "Each agency determines which official positions in its organization are required to be designated in its conflict of interest code, and what specific level of disclosure is appropriate for each position, pursuant to section 87301. Persons so designated in the conflict of interest code are 'designated employee[s],' a term that includes any 'officer, employee, member, or consultant of an agency' whose position involves making or participating in making decisions that have a foreseeable and material effect on any financial interest. (§ 82019, subd. (c); reg. 18701, subd. (a).) Therefore, individuals may have different levels of disclosure depending on their [category] designation in their respective agency's conflict of interest code." (*Ortiz Advice Letter, G-03-106.*)

As a category 1 designated employee, unless an applicable exception applies, you are required to report gifts valued at \$50 or more in the aggregate in a calendar year from any single source.

Gift Limit: Section 89503 also imposes certain limits on the value of any gifts received. Designated employees may not accept a gift from any single source valued at more than \$340 in the aggregate in a calendar year if the employee would be required to report the receipt of a gift(s) from that source on his or her statement of economic interests. (§ 89503(c), reg. 18940.2.)

Again, as a category 1 designated employee, unless an applicable exception applies, you may not accept any gift(s) valued at more than \$340 in the aggregate in a calendar year from any single source.

The Act defines "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 ..." (§ 82028(a)). Section 82028(b) provides for certain exceptions, among which are unused gifts returned within 30 days (§ 82028(b)(2)) and gifts received from certain enumerated relatives (§ 82028 (b)(3).) Additionally, exceptions are provided in regulations 18942-18944.

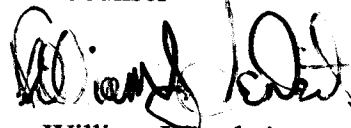
As defined by the Act, the term "gift" excludes gifts from an employee's immediate family and certain specified relatives. (§ 82028(b)(3); regulation 18942(a)(3).) The definition, however, does not exclude gifts from persons who are in a dating relationship with the recipient. "Nevertheless, the Commission has advised that personal gifts received within an established bona fide dating relationship are not gifts under the Act. This type of relationship is similar to a familial or spousal relationship, in which people frequently exchange personal gifts and disclosure or disqualification would not further the purposes of the Act." (*Albuquerque* Advice Letter, No. A-00-120; *DeRosa* Advice Letter, No. I-98-284; *Shea* Advice Letter, No. A-84-085.)

Therefore, under this rule, personal gifts received in a bona fide dating relationship are neither reportable nor subject to the gift limit provisions of the Act.

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

Sincerely,

Luisa Menchaca
General Counsel



By: William J. Lenkeit
Counsel, Legal Division

Enclosure
WJL:jg
I:\AdviceLtrs\04-097