



FAIR POLITICAL PRACTICES COMMISSION

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July 19, 2004

Linda Y. Chang
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Office of Legal Counsel and Investigations
Post Office Box 806
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**Re: Your Request for Advice
Our File No. A- 04-158**

Dear Ms. Chang:

This letter is in response to your request for advice on behalf of Department of Toxic Substances Control employee Alice Dowdin regarding the gift limit and conflict-of-interest provisions of the Political Reform Act (the "Act").¹

QUESTION

If Great Valley Center, a nonprofit organization, pays tuition, meals, and lodging for Ms. Dowdin to attend leadership programs based on Ms. Dowdin's dual status as an elected vice mayor for a city, will the payments be prohibited gifts and might they give rise to possible conflicts of interest?

CONCLUSION

The leadership program you describe is considered to be informational material. Payments for informational material are exempted from the provisions in the Act concerning gifts. Because Great Valley Center is an Internal Revenue Service 501(c)(3) nonprofit, in this situation, the payments it will make for meals and lodging are not subject to the gift limit although they may be reportable gifts to Ms. Dowdin.

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

FACTS

Ms. Dowdin, a Department of Toxic Substances Control (“DTSC”) employee who is designated in DTSC’s conflict of interest code, is also an elected vice mayor of a nearby city. In her capacity as vice mayor, Ms. Dowdin has been invited to an all-expense paid leadership seminar for elected officials hosted by the Great Valley Center, a nonprofit regional organization whose mission is to provide elected officials with information to make sound land use decisions to best protect the valley and, to that end, regularly pays tuition and other expenses for elected officials to attend educational programs concerned with leadership in government.

The Board of Great Valley Center nominated Ms. Dowdin for an invitation to attend a seminar not available to the public. Ms. Dowdin will not be giving a lecture or be on any panel at the seminar. The seminar, which will last five days and includes lodging and meals at the Tenaya Lodge in Yosemite Valley, will be conducted by professors from Harvard University. Travel costs to and from Yosemite are not included in the offer of payment.

The subject matter of the training is specifically designed to assist Ms. Dowdin in performing her duties as vice mayor more efficiently and knowledgably. You posit that the training may incidentally assist the performance of her duties as a Department of Toxic Substances Control employee by improving her leadership skills.

ANALYSIS

The Act provides that “[n]o elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than [\$340].”² (Section 89503(a).) This same prohibition applies also to designated employees of a state agency who likewise are not permitted to receive gifts valued at more than \$340 if the 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).) Ms. Dowdin qualifies as an elected official in her vice-mayoral capacity and a designated employee of a state agency in her DTSC capacity. Although we do not know the level of disclosure assigned to her by DTSC’s conflict of interest code, Ms. Dowdin is subject to full disclosure of gifts in her vice-mayoral capacity. (Sections 87200, 87202-87203, 87300, and 87302.) Accordingly, she is prohibited from receiving any gift from a single source valued at more than \$340 per calendar year.

The “Informational Material” Exception

The term “gift” means, in pertinent part, “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not

² The gift limit and the threshold for disqualification are adjusted biennially to reflect changes in the Consumer Price Index. The limit was last adjusted in January 2003. (Section 89503(f); regulation 18940.2.)

received.” (Section 82028(a).) However, expressly excluded from the definition of a “gift” is informational material, defined as “any item which serves primarily to convey information and which is provided for the purpose of assisting the recipient in the performance of his or her official duties or of the elective office he or she seeks.” (Section 82028(b)(1), regulation 18942.1.) “Informational material” may include “[b]ooks, reports, pamphlets, calendars, periodicals, videotapes, or free or discounted admission to informational conferences or seminars.” (Regulation 18942.1(a).) In a previous advice letter, *Schwartz* Advice Letter, No. A-03-290, we explored whether or not payments made specifically by Great Valley Center for scholarships to attend training pertinent to an elected official’s duties in office were exempt from disclosure as informational material. In that letter we found, because the scholarships provided by Great Valley Center are for the express purpose of fostering leadership skills in public officials, the payments for actual attendance at the seminars would be considered to be informational material and not a gift under the Act. (See also *Murakami* Advice Letter, No. I-91-260; *Kolodney* Advice Letter, No. A-87-182; *Douglas* Advice Letter, No. A-90-128.)

The “501(c)(3) Exception”

In your letter you state that Ms. Dowdin will receive, in addition to tuition, paid lodging and meals at the Tenaya Lodge in Yosemite Valley. Although we have determined above that payments for tuition to the seminar will meet the exception for informational material, no payment for travel or reimbursement for any expenses may be deemed “informational material.” (Section 82028(b)(1).) However, another exception to the gift limit appears to apply to the meals and lodging paid by Great Valley Center. Although your letter refers to Great Valley Center as a nonprofit, the *Schwartz* Advice Letter, *supra*, is more specific in referring to Great Valley Center as being a 501(c)(3) nonprofit.³ Section 89506(a) provides:

“(a) Payments, advances, or 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:

¶...¶

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under the Section 501(c)(3) of the Internal Revenue Code.”

³ Please be aware that the Commission does not act as a finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

Regulation 18950.1(b) further specifies:

“(b) Travel Provided by Governmental Entity or Charity. A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Government Code Sections 89501, 89502, or 89503 if:

(1) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and

(2) The payment is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, defined in Section 203 of the Revenue and Taxation Code, or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person that is domiciled outside the United States and that substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.

Except as provided by California Code of Regulations, Title 2, Section 18950.3, any payment made for transportation, lodging, and subsistence, specified by subdivision (b), shall be reported in accordance with Government Code Section 87207(c).”

Thus, although they must be disclosed and the source of the gift identified, payments governed by provisions of section 89506(a)(2) and regulation 18950.1(b) are not subject to the gift limit. Based on the information that Great Valley Center pays tuition for seminars designed to promote leadership and quality decisionmaking in government, we find that travel payments related to attending the seminar are “reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy.” Therefore, the requirements of subdivision (b)(1) of regulation 18950.1 above are met. In addition, because Great Valley Center is a 501(c)(3) organization, it meets the criteria of subdivision (b)(2). Consequently, payments for meals and lodging received by Ms. Dowdin from Great Valley Center are gifts to her which must be disclosed on her statements of economic interests, but they would not be subject to the gift limit.

Potential Conflicts of Interest Regarding Great Valley Center

A public official may not “make,” “participate in making,” or “influence” a governmental decision that will have a reasonably foreseeable material financial effect on his or her economic interests, including sources of gifts in excess of \$340. (Sections 87100 and 87103(e).) We have no facts regarding any governmental decisions which may come before Ms. Dowdin and so, are unable to answer this aspect of your question. The Commission pamphlet, “*Can I Vote? Overview of the Conflicts Laws*” (copy enclosed) explains the steps of the conflict-of-interest analysis. This pamphlet discusses the various steps in the

conflicts analysis and instructs how the rules are to be applied. Because conflict-of-interest analysis is highly fact-specific, it is not possible to advise, merely on the basis of a known economic interest whether and under what circumstances Ms. Dowdin would or would not have a conflict of interest in any upcoming governmental decision. Should more specific circumstances arrive in the future, we encourage either you or Ms. Dowdin to please feel free to write in for additional advice.

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

Sincerely,

Luisa Menchaca
General Counsel



By: Adrienne Korchmaros
Political Reform Consultant

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