



FAIR POLITICAL PRACTICES COMMISSION

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April 18, 2007

Robin Sutherland
15220 Amberley Lane
Grass Valley, CA 95949

**RE: Your Request for Informal Assistance
Our File No. I-07-036**

Dear Ms. Sutherland:

This letter is in response to your request for advice regarding the travel and gift provisions of the Political Reform Act (the "Act").¹ Although several attempts were made to contact you by telephone, because you have not responded to date, we do not have the necessary facts to make a determination regarding some aspects of your question and are treating your request as one for informal assistance.² Nothing in this letter should be construed to evaluate any conduct that may have already taken place and any conclusions contained in this letter apply only to prospective actions such as reporting.

QUESTION

As a member of the United Auburn Indian Community (UAIC) Indian tribe, were you given a reportable gift when the UAIC paid for your vacation trip to Walt Disney World in Orlando?

CONCLUSION

Under some circumstances, gifts offered by a governmental entity to residents within its jurisdiction are not subject to the Act's gift requirements. However, you do not provide sufficient facts for us to make this determination.

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).)

FACTS

Prior to your leaving office in December 31, 2006, you were a Supervisor for the County of Nevada. You are also a member of the United Auburn Indian Community. In December of 2006, prior to your leaving office as a supervisor, you were offered a vacation paid by the UAIC, which was offered to all tribal members of the UAIC, and, according to the facts presented in your letter, was not based on your official status. You accepted the offer of the vacation and went to Walt Disney World in Orlando at UAIC's expense.

ANALYSIS

As a local elected official, you were subject to a \$360 per calendar year gift limit³ from any single source (Section 89503(a); Regulation 18940.2(a)). In your request for advice, you have asked whether Section 89506(a)(2) concerning payments for travel, exempted your travel to Walt Disney World from the gift limit. Section 89506(a)(2) states:

“(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 Section 501(c)(3) of the Internal Revenue Code.” (Section 89506(a)(1)- (2).)

In a previous advice letter, we concluded that, for purposes of Section 89506(a)(2), an Indian Tribe, given its place in the American federal system, is a “government” or a “governmental authority.”⁴ (See the reference to *United States v.*

³ The 2005-2006 gift limit of \$360 was increased to \$390 effective January 1, 2007, as a result of the Commission's biennial adjustment for inflation.

⁴ Regarding whether or not UAIC is a federally recognized Indian Tribe, the facts from the UAIC website, <http://www.auburnrancheria.com>, are as follows: in 1991, surviving members of the Auburn Band reorganized their tribal government as the United UAIC and requested the United States to formally restore their federal recognition. An Act of Congress passed the Auburn Indian Restoration Act, which restored the Tribe's federal recognition in 1994.

Wheeler (1978) 435 U.S. 313, 322-323 in *Battersby* Advice Letter, No. A-98-176.) However, even though the payment for your travel to Walt Disney World was from a qualifying governmental entity for purposes of Section 89506(a)(2), a trip to Walt Disney World does not appear to meet the requirement in Section 89506(a) that the travel be for a purpose "reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy." Therefore, absent additional information, your travel to Walt Disney World does not meet the standards in Section 89506(a)(2) for being a reportable, yet not limited, gift.

However, because we view the UAIC as a government for the purposes of the Act's gift requirements, our analysis of your question does not cease with Section 89506(a)(2). Section 82028 defines a 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 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.*" (Emphasis added.) The question, then, is whether or not the payment for travel has been made to members of the public without regard to official status.

In *In re Russel* (1975) 1 FPPC Ops. 191, the Commission interpreted identical language then contained in the Act's definition of income in connection with a discount by the Holiday Inn to all state employees. The Commission stated:

"A discount that is available to all employees of the State of California, without regard to what office or position they hold in state government, is a discount made available 'without regard to official status.' . . . The statutory language does not require that the discount be made to 'all' members of the public, but implies that the discount will be offered on a uniform basis to a diverse group. . . . [However, if] forms of special notice are given only to high ranking officials, the discount is not offered on a uniform basis to all state employees and thus is not made available 'without regard to official status.'"

The *Russel* opinion was applied in the *Lum* Advice Letter, No. A-98-147, regarding a public official's ability to receive a travel subsidy offered by the Town of Colma to all adult residents of the Town of Colma (non-residents were not entitled to receive the subsidy). The *Lum* letter determined that the group eligible for the discount (the Town of Colma had 500 residents total) was a heterogeneous group large enough to fall within the *Russel* opinion. *Lum* further stated that a city or town's practice of offering discounts only to those within its jurisdiction should not be limited by the Act's gift limitation unless public officials are able to unfairly take advantage of these type of programs. The *Lum* letter, in accordance with the *Russel* Opinion, applied a two-prong test to ascertain whether or not there was a gift. The first prong is to determine whether the payment was publicized, and the second ascertains that the selection method did not

unfairly benefit public officials. In *Lum*, the Town of Colma regularly sent a newsletter one week in advance alerting each resident of the date and location of the sign-up day for the adult programs. Because sign-ups were on a "first come, first served basis," equal opportunity to participate in the summer programs was given to all residents. Since, as mentioned, we view the UAIC to be a government for purposes of the Act's gift requirements, we would analyze gifts offered to tribal members on the same basis as the gift was analyzed in *Lum*. However, due to our inability to reach you and obtain further information regarding how the trip offered by the UAIC was advertised and whether or not every tribal member could avail themselves of the opportunity to take the trip, we cannot provide a definitive answer to your question.

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

Sincerely,

Scott Hallabrin
General Counsel


By: Adrienne Korchmaros
Political Reform Consultant II

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