



FAIR POLITICAL PRACTICES COMMISSION

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April 5, 2007

Richard Persons
1010 11th Street
Lakeport, California 95453

**RE: Your Request for Advice
Our File No. A-07-054**

Dear Mr. Persons:

This letter is in response to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹

QUESTION

Is a cash gift distributed from the estate of your great aunt a "gift" within the meaning of the Act?

CONCLUSION

No. Under the circumstances you describe, this distribution from the estate of your great aunt is not a "gift" subject to the Act's gift limits or reporting requirements.

FACTS

Your great aunt is eighty-eight years old, and has begun to disburse her estate to avoid the tax penalties that would be payable after her death. On December 31, 2006 she distributed checks of \$12,000 to each of her eight great nephews and nieces, of which you are the eldest. It is your understanding that the current IRS limit for nontaxable gifts is \$12,000. Your great aunt is widowed and has no living children.

You are the Chief Executive Officer of the 59th District Agricultural Association, a state agency better known as the Lake County Fair. This employment requires that you file a Form 700, and we assume for purposes of this letter that you are required to report all gifts in excess of the statutory reporting threshold. You also file as an alternate board

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

member for the California Fairs Services Authority, and as a member of the Lake County Airport Land Use Commission.

In a telephone conversation with FPPC staff shortly before your filing deadline, we advised you to report this payment as a gift on your Form 700, to ensure compliance with the law while we considered your circumstances more carefully, and could provide you with formal written advice on what appeared to be a novel question of law.

ANALYSIS

As a public official within the meaning of Section 82048, required to file Statements of Economic Interests (Form 700), you are subject to the Act's gift limitations and reporting requirements. In particular, Section 89503 provides that:

“(c) No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.”²

Section 82028(a) defines the term “gift” broadly as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received”

The broad definition of this term is qualified by a series of exceptions enumerated at Section 82028(b), and again at Regulation 18940.2. The statute and regulation each exempt gifts from a variety of family members, specifically a 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. We note that while aunts and grandparents are included in this list, “great aunts” – the sister of a grandparent – are not listed. We have in the past recognized that an express mention of a particular relationship may not in all cases be required. Thus in the *Colbert Advice Letter No. A-92-639*, we concluded that the exemption afforded to gifts from parents-in-law might be extended to a *former* mother-in-law:

“The drafters of the Act, by creating this exception, apparently concluded that gifts from parents-in-law to officials are not only common and expected, but also free from any potentially corrupting influence on the official. Divorce would not necessarily change these expectations or the noncorrupting nature of the gifts.”

² Section 89503(f) provides for a biennial adjustment to the gift limit, which is presently set at \$390 in Regulation 18940.2.

We believe that the same logic can be applied to your circumstances. Gifts distributed from the estate of an elderly great aunt are neither unexpected nor likely to corrupt a great-nephew who happens to be a public official. Moreover, there is an additional exception provided at Section 82028(b)(5) for “[a]ny devise or inheritance.” The gift from your elderly great aunt’s estate to eight great nephews and nieces was made in advance of her death, but in anticipation of that event, in a fashion that takes lawful advantage of federal tax policy permitting limited tax-free distributions of an estate during the life of the person making the bequest.

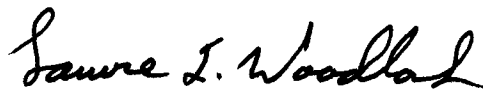
We recognize that the terms “devise” and “inheritance” are normally associated with the disbursement of estate assets following the death of the prior owner. But federal tax policy permits, and indeed encourages, limited distributions from an estate during the life of the testator. The terms “devise” and “inheritance” are not defined by the Act, but we believe that it would further the Act’s purposes to read these terms in a fashion that is consistent with modern estate planning which is shaped, in part, by federal tax policy.

It is implicit in the *Colbert* Advice Letter that the Act’s gift rules should be applied in a manner that does not discourage or prohibit the transfer of “gifts” commonly found within established family relationships. Thus we conclude that the distribution of assets from the estate of an elderly great aunt, made during her lifetime to avoid the tax liabilities that would accrue if distribution were delayed, do not constitute reportable “gifts” under the Act, and are not subject to the Act’s gift limits.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Lawrence T. Woodlock
Senior Counsel, Legal Division

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