



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

March 10, 2008

Lori A. Johnson
P. O. Box 847
Pauma Valley, CA 92061-0847

Re: Your Request for Advice
Our File No. A-08-024

Dear Ms. Johnson:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ Nothing in this letter should be construed to evaluate any conduct that has already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Does the transfer of an automobile with a value of approximately \$6,200 to you by an individual for whom you have provided services and incurred out-of-pocket expenses with a value of approximately \$7,788.39 constitute a reportable gift under the Act?

CONCLUSION

No. 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. You have provided consideration of greater value than the automobile you received. However, because the automobile was given to you as payment for your services, its value constitutes income that must be reported on the Statement of Economic Interests you file as an agency official if that agency's conflict-of-interest code requires the source of the income, Mr. Finger, to be reported.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

You are the General Manager of the Rincon Ranch Community Services District and a trustee of the Valley Center-Pauma Unified School District. You are preparing to file your annual Statement of Economic Interests for the year 2007. On June 3, 2007, your good friend, Sherman W. Finger, transferred his automobile to you so that you could drive him to his doctor appointments and take him out to lunch or dinner when he became unable to drive himself. Mr. Finger is 92 years old. In addition to taking him out for meals and doctor appointments, you pick up and drop off his clothes for dry cleaning and make sure he has adequate clothing and toiletries. Mr. Finger lives in an assisted living home. You also coordinate with his caregivers to ensure that his needs are met. You do not use the automobile for any personal use. You only use this vehicle to transport Mr. Finger, who has indicated a strong preference for riding in it rather than your other vehicles, which are difficult for him to climb in and out of.

In our telephone conversations of February 20th and 22nd, you advised that the fair market value of the services you provide for Mr. Finger is \$15.00 per hour. This is based on the amount charged by another individual, Joe Powers, who has provided such services in the past and who has offered to do so on those occasions when you may be unavailable. You have provided documentation of the trips you have made with Mr. Finger during 2007 indicating that these amounted to 134 trips taking 340 hours of your time. You have calculated your costs to register and insure the automobile, the IRS mileage rate for the 134 trips, dry cleaning bills, prescription bills, groceries and other items you purchased for Mr. Finger. The total sum of these costs is \$7,788.39. You have also provided documentation in support of your conclusion that the fair market value of the automobile is approximately \$6,223.00. You intend to continue to provide these services for Mr. Finger as long as he needs them.

ANALYSIS

The term "gift" means "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.) Section 82044 defines "payment" to mean a payment, distribution, transfer, loan, advance, deposit, gift or other *rendering of money, property, services or anything else of value, whether tangible or intangible*. Section 82030(a) similarly defines "income" as "a *payment* received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage. . . ." Thus, the rendering of property that confers a personal benefit on an official may be considered income or a gift depending on the specific facts surrounding the transaction.

The primary distinction between a gift and income is whether the recipient has provided **equal consideration** in exchange for the payment. If a payment is received and the recipient *does not provide consideration of equal or greater value to the source*

of the payment, the payment will be considered a gift. Conversely, where the recipient can demonstrate that he or she, in fact, provided **equal or greater consideration** for the payment, the payment will be treated as income. (*Sodergren Advice Letter*, No. I-93-345.)

Based on the facts you provided, the exchange of the automobile for your services resulted in the receipt of income that is reportable under Section 87207. You provided services to another, for a payment of approximately equal value -- the rendering of property, i.e. the transfer of the automobile. In determining whether "full and adequate consideration" has been received in a transaction, the Act generally begins from a determination of "fair market value." Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. (*Kaiser Co. v. Reid* (1947) 30 Cal.2d 610, 623.) Under your facts, the exchange of your services for the automobile suggests that the parties believed that the items exchanged were of equal value. Therefore, Mr. Finger would be considered a source of income to you of \$500 or more and reportable on any Statement of Economic Interests you file if that government agency's conflict-of-interest code requires sources of income such as Mr. Finger to be reported. (See Section 87302.)

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

Sincerely,

Scott Hallabrin
General Counsel



By: Valentina Joyce
Counsel, Legal Division

VJ:jgl