



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

August 29, 2008

Holly La Rue
2866 Hickory Wood Lane #28
Thousand Oaks, CA 91362

Re: Your Request for Advice
Our File No. A-08-141

Dear Ms. La Rue:

This letter responds to your request for advice regarding the reporting provisions of the Political Reform Act (the "Act").¹ You should not construe this letter as assistance on any conduct that may have already taken place. (*See* Regulation 18329(b)(8)(A).) In addition, we base this letter on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Please note that we base our advice solely on the provisions of the Act.

QUESTION

What are your reporting and other obligations under the Act for money that your ex-husband pays you that you use for household expenses?

CONCLUSION

As to that part of the payment that is for the fair market value of the meals you cook for your ex-husband, you are not required to report this income because your ex-husband lives and works outside your city council's jurisdiction. The remainder is a gift subject to the gift limits. Also, if you are elected, income of \$500 and gifts cumulating to \$390 or more received from your ex-husband during the 12-month period prior to your participation in any government decision having a financial effect on your ex-husband may create a conflict of interest for you under the Act.

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 running for city council in Thousand Oaks, California. You receive money from your ex-husband based on an informal agreement that is outside your divorce settlement. You cook vegetarian meals for your ex-husband and deliver them on a weekly basis. You use the money he gives you to support your household, including buying the food that goes into the meals you cook for him. You stated during our telephone conversation that, while the payments are not directly remitted for the cooking you do, you suspect the payments would stop if you stopped cooking. He does not live in your jurisdiction, nor does he do business there. You now ask whether this money is reportable income as income or a gift under the Act and if the Act's gift limits would apply.

ANALYSIS

You are a candidate for city council in the city of Thousand Oaks. A candidate for city council is required to file a Statement of Economic Interest ("SEI") no later than the final filing date for his or her declaration of candidacy. (Sections 87200 and 87201.) The SEI must generally report, among other things, all income of \$500, received during the 12-month period before the filing, from each person doing business in the jurisdiction and all gifts from a person, cumulating to \$50 or more in value received during the 12-month period before the filing. (Sections 87207, 82028, and 82030.) This information must also be reported on your SEI if you are elected to the city council. (Section 87200, 87202-87210.)

The Act 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, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse.

(Section 82030(a).)² Your ex-husband provides payments to you on an irregular basis to assist with your household bills. You continue to cook for your ex-husband and deliver meals to him on a weekly basis. To the extent that the money he pays you is in consideration for the meals that you cook for him and deliver to him, it is income, and normally would be reportable on your SEI, but because your ex-husband does not live or

² Excluded from the Act's definition of income are payments for spousal support (Section 82030(b)(7)), excepting, albeit incorrectly, "alimony" from that definition. If you and your ex-husband had a spousal support arrangement, it would be neither income nor a gift.

do business in your jurisdiction it is not reportable. (Section 82030(a).)³ If the amount is over and above the fair market value of home-delivered, vegetarian meals, the remainder is a gift to you.

The Act defines a gift as "a payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received." (Section 82028(a).) In addition to the reporting requirements discussed above, no candidate for city council or an individual elected to that office may accept gifts from a single source with a total value over \$390⁴ during the period of his or her candidacy, or, if elected, in a calendar year. (Section 89305(b)(1); Regulation 18940.2(a).) To the extent that the payments are in excess of the value you provide to him, they are prohibited if that amount exceeds \$390 during the period of your candidacy (or each calendar year if you are elected). A gift is neither accepted nor received if it is returned, donated, or 'paid down' within 30 days after receipt of the gift. (Regulation 18943(a).)

Also, if you are elected to the city council, the money from your ex-husband could create a conflict of interest in certain situations. If your husband is doing business in the jurisdiction, and the amount of the income is over \$500, for example, there could be a conflict of interest if you have a decision before you that financially affects your ex-husband or his business. (Regulation 18703.3.) Or, if the gift amount is \$390 or more during the 12-month period before you participate in a government decision financially affecting your ex-husband or his business, a conflict of interest could also arise depending on the factors involved and the decision before you. (Regulation 18703.4.) Should such a situation arise, please feel free to contact us again.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl

³ Section 82030 states that the definition of income does not include "income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title."

⁴ The \$390 gift limit is adjusted each odd-numbered year to reflect changes in the Consumer Price Index. (Section 89503(f).)