



FAIR POLITICAL PRACTICES COMMISSION

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December 17, 2008

Matt Gray and David Warren
Taxpayers for Improving Public Safety
1029 K Street, Suite 25
Sacramento, California 95865

Re: Your Request for Advice
Our File No. A-08-191

Dear Messrs. Gray and Warren:

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

QUESTIONS

1. May Capital Alliance, a lobbying firm, pay for framed copies of an excerpt from the Torah costing more than \$10 each, that Taxpayers for Improving Public Safety, a lobbyist employer, will give to elected state officers and legislative officials?
2. May elected state officers or legislative officials accept the framed copy of the excerpt from the Torah?
3. Do these gifts fall within the gift exception for informational material?

CONCLUSIONS

1. No. The excerpt from the Torah is a gift under Section 82025 that exceeds the \$10 gift limit under Section 86203 of the Act.
2. No. Under Section 86204, it is unlawful for any person to receive any gift

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.

that is unlawful under Section 86203.

3. No. While arguably the gifts may primarily convey information, their informational value is only loosely tied to assisting the recipients in the performance of their official duties.

FACTS

On December 1, 2008, I had a telephone conversation with Mr. Warren during which he clarified that you are both registered lobbyists operating under the lobbying firm called Capital Alliance. Mr. Warren advised that Taxpayers for Improving Public Safety ("TIPS") is a registered employer of lobbyists that intends to give its members, as well as state officers and legislative officials, a framed excerpt from the Torah on the subject of righteousness. The purpose of the gift is to encourage discussion on the subject of ethics in government. Your lobbying firm will be paying for these items. The cost of each framed Torah excerpt will exceed \$10. Mr. Warren also indicated that you have been authorized by TIPS to request advice on its behalf.

ANALYSIS

Section 86203 prohibits lobbyists from making gifts to one person aggregating more than \$10 in a calendar month. Under Section 86204, it is unlawful for any person to receive any gift that is unlawful under Section 86203. For purposes of these prohibitions, the term "gift" means "a gift made directly or indirectly to any state candidate, elected state officer, or legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist." (Section 86201.)

Under Regulation 18945, if a person makes a gift to a third party and, in fact, directs and controls the use of the payment to make a gift to one or more clearly identified officials, the person is the source of the gift to the official or officials. Because Capital Alliance is paying for the framed Torah excerpts and has directed TIPS to provide them to elected state officers and legislative officials, Capital Alliance is the source of the "gifts."

The term "gift" is defined in Section 82028 as a payment for which consideration of equal or greater value has not been received by the donor. The term "payment" includes the rendering of money, property, services or anything else of value, whether tangible or intangible. (Section 82044.) Therefore, unless an exception applies, the giving of the framed Torah excerpt, worth in excess of \$10, to elected state officers or legislative officials would violate Section 86203. By accepting these gifts, recipients who are elected state officers or legislative officials would violate Section 86204.

Section 82028(b)(1) sets forth an exception to the gift rule relating to “informational material such as books, reports, pamphlets, calendars, or periodicals.”² Regulation 18942.1 defines informational material 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” Regulation 18942.1 lists books as an example of such informational material.

The Torah, in its broadest sense, is the body of divine knowledge and law found in the Jewish scriptures and tradition consisting of the five books of Moses.³ Hence, a copy of the Torah itself would appear to fall within the example of books. Common sense suggests that an excerpt from a book would also fall within this example.

The primary issue, however, is whether the framed Torah excerpt serves primarily to convey information and is provided for the purpose of assisting the recipients in the performance of their official duties. (Regulation 18942.1.)

Previously, we have advised that written materials provided at a conference whose purpose is to exchange ideas and free-flowing discussion of motor vehicle industry-related topics to the Motor Vehicle Board met the definition of informational materials. (*Weinberg* Advice Letter, No. A-06-090.) We have said that free admission to a conference by a public official whose job it is to administer an awards program where the conference would allow the public official to learn more about the award process, constituted informational materials. (*Holloway* Advice Letter, No. A-04-043.) Similarly, we have advised that scholarships for programs whose purpose is to foster leadership skills in public officials and are intended to directly assist public officials in their official duties fall within the informational materials exception (*Swartz* Advice Letter, No. A-03-290) and that free admission to performances for a city official charged with booking performances at the city’s center for performing arts fall within this definition.

We have also advised that written handouts and materials at information booths, information about international trade, fliers advertising the event, a book of company profiles, signs directing participants to various functions, parking at the event and videotapes provided by speakers or others at an event co-sponsored by public officials and private parties are considered informational materials if the purpose of the event is directly related to the public official’s duties. (*Napolitano* Advice Letter, No. A-96-112; *Richardson* Advice Letter, No. A-96-159).

² Section 82028(b)(6) lists another exception for “personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).” If the Torah excerpts were to be placed on *personalized* plaques worth less than \$250, this exception would apply. Your facts indicate that this is not the case.

³ “Scripture” is defined as the sacred writings of a religion. The five books of Moses are Genesis, Exodus, Leviticus, Numbers and Deuteronomy. *Webster’s New American Dictionary*. (1995); *Judaism 101*, *Online Encyclopedia of Judaism*, Rich, Tracey R. (copyright 5756-5966 (1995-2006).)

Even tours that serve to primarily convey information to a public official are considered informational if they assist the public official in the performance of his or her official duties. (*Villines* Advice Letter, No. I-05-201; *Rudolph* Advice Letter, No. A-01-229; *McAndrews* Advice Letter, No. A-98-203; *Bennion* Advice Letter, No. I-94-242; *Humbert* Advice Letter, No. A-93-444.)

Finally, a solid plastic container with two samples of crude oil sealed in clear material bearing the logo of the Independent Oil Producers' Agency was not considered informational simply because legislative issues arise which require knowledge of the difference between physical properties of California crude oil and oil produced in other regions. We advised that while it might be meaningful for legislators to have the sample for reference and demonstration purposes, the container was a gift rather than informational material because it supplied minimal information and appeared to be more decorative than informational in nature.

A review of these advice letters suggests two factors that stand out in determining that an article or service constitutes informational material. First, as required by Regulation 18942.1, the article or service must primarily convey information. Second, there must be a strong link between the informational value of the article or service and the duties performed by the public official. Applying these factors to your situation, we conclude that while the framed Torah excerpt may be helpful in stimulating conversation about ethics in government, the information it provides is arguably minimal. Even if it is considered to primarily convey information, however, its informational value is only loosely tied to the purpose of assisting the recipients in the performance of their official duties. Accordingly, you may not pay for the gifts of the framed Torah excerpt to elected state officers or legislative officials without violating the prohibition of Section 86203 and such recipients may not accept these gifts without violating Section 86204.

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