



## FAIR POLITICAL PRACTICES COMMISSION

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March 30, 2009

Robert Eland  
9329 Mariposa Road, Suite 205  
Hesperia, CA 92223

Re: Your Request for Advice  
**Our File No. I-09-048**

Dear Mr. Eland:

This letter responds to your request for advice regarding the financial disclosure provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your question seeks general guidance, we are treating your request as one for informal assistance.<sup>2</sup> Also enclosed is our fact sheet on gifts, honoraria, travel and loans.

### QUESTIONS

1. Are you required to report gifts of \$50 or more from close family relatives (such as your mother and father, brother, sister, grandparents, aunts) and from your former fiancée, now wife?
2. Are you required to report wedding gifts of \$50 or more from close family relatives?
3. Are you required to report your wife's income on your Form 700?
4. If your wife receives inheritance money from her family (your in-laws) does this need to be reported on your form 700?

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requester with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; Regulation 18329(c)(3).)

## CONCLUSION

1. No. The Act and Commission regulations provide exceptions for certain types of gifts. (Section 82028; Regulations 18940-18946.5.) Gifts from the following are not subject to any gift limit and are not required to be reported or disclosed on your statement of economic interests (Form 700): your spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, aunt, uncle, niece, nephew, or first cousin or the spouse of any such person, unless he or she is acting as an agent or intermediary for another person who is the true source of the gift. (Section 82028(b)(3); Regulation 18942 (a)(3).) Furthermore, under the "bona fide dating relationship" exception, gifts from your fiancée are not reportable or subject to limits.
2. No. See answer to Question 1.
3. Yes, as described below.
4. No. The Act and Commission regulations provide exceptions for certain types of gifts. (Section 82028; Regulations 18940-18946.5.) A devise or inheritance is not required to be reported or disclosed on your Form 700. (Section 82028(b)(5); Regulation 18942(a)(5).)

## FACTS

You are a field representative to San Bernardino County Supervisor Brad Mitzelfelt. You are a designated employee with full disclosure. You have a few questions regarding gifts, gift limits and general reporting. Specifically, you wish to know if you need to report gifts over \$50 received from close family relatives such as: your mother and father; your grandparents; your sister; your brother; your aunts; uncles; cousins; fiancée; fiancée's mother and father; fiancée's grandmother and grandfather; fiancée's brother; and your friends who have no business with the county and who live in different counties or states. You also wish to know if there are gift limits on gifts received from these individuals.

You married your fiancée on January 24, 2009. You wish to know if there are limits on the value of wedding gifts you received, and any reporting requirements regarding the receipt of wedding gifts.

## ANALYSIS

### Gift Disclosure:

Among the Act's gift provisions are those requiring the disclosure of certain gifts. Public officials enumerated in Section 87200 and employees who are designated in an agency's conflict-of-interest code, as required by Section 87300, must disclose certain economic interests, including gifts, on the employee's Statement of Economic Interests (Form 700).

Under Section 87300, each agency determines which positions are designated in its conflict-of-interest code and the level of disclosure appropriate for the position. Any officers, employee, member, or consultant of an agency whose position involves making or participating in making decisions that have a reasonably foreseeable and material effect on any financial interest must be designated. (Section 87302.) These "designated employees" may have different levels of disclosure depending on their category designation in their respective agency's conflict-of-interest code. (See *Ortiz Advice Letter*, G-03-106.)

You indicated that you have full disclosure under your agency's conflict-of-interest code. Therefore, you are required to disclose all sources of gifts totaling \$50 or more during a reporting period unless an exception applies. (Section 87302(b) and 87207(a)(1).)

### Gift Limit:

Section 89503 also imposes certain limits on the value of any gifts received. Designated employees may not accept a gift or gifts from any single source valued at more than \$420,<sup>3</sup> in the aggregate, in a calendar year if the employee would be required to report the receipt of a gift from the source on his or her statement of economic interests. (Regulation 18940.2.)

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 . . . ." (Section 82028(a).) Section 82028(b) provides for certain exceptions including exceptions for unused gifts returned within 30 days and gifts received from certain relatives. Additional exceptions are provided in Regulations 18942 through 18944.

As defined by the Act, the term "gift" excludes gifts from an official's immediate family and certain specified relatives. (Section 82028(b)(3); Regulation 18942(a)(3).) The definition, however, does not exclude gifts from persons who are in a dating relationship with the recipient. "Nevertheless, the Commission has advised that personal

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<sup>3</sup> The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. For 2007-2008, the gift limit was \$390. (Regulation 18940.2(a).)

gifts received within an established bona fide dating relationship are not gifts under the Act. This type of relationship is similar to a familial or spousal relationship, in which people frequently exchange personal gifts and disclosure or disqualification would not further the purposes of the Act.” (*Albuquerque* Advice Letter, No. A-00-120; *DeRosa* Advice Letter, No. I-98-284; *Shea* Advice Letter, No. A-84-085.)

Accordingly, personal gifts received from individuals such as your mother, father, brother, sister, grandparents, aunts, uncles and first-cousins fall under the exception and are not reportable or subject to limits. Similarly, gifts you received from your fiancée in a bona fide dating relationship are neither reportable nor subject to the gift limit provisions of the Act. (*Silva-Manuel* Advice Letter, No. I-08-085.) However, this conclusion is limited to personal gifts such as entertainment, meals, personal property, or expenses involved in recreational travel.

Note that payments or loans in the context of a business, or payments in exchange for which you provide full and adequate consideration, such as a loan, are considered income and do not fall under the bona fide dating relationship exception. Income payments from a person, even if you are in a “bona fide dating relationship” with the individual, are subject to the Act’s reporting requirements. Additionally, these payments may give rise to a conflict of interest disqualifying you from making, participating in making, or using your position to influence a governmental decision if the decision will have a reasonably foreseeable material financial effect on the source of the income.

### **Wedding Gifts:**

You have also asked about the reporting and valuation of wedding gifts. While wedding gifts are not subject to the gift limit,<sup>4</sup> they are reportable. Wedding gifts, valued at fifty (\$50) or more must be reported.<sup>5</sup> (Section 87207(a)(1).)

Regulation 18946.3 provides a method for the valuation of wedding gifts:

“ . . . wedding gifts given to an official and his or her spouse-to-be are considered as gifts to both spouses equally and the official is deemed to receive one-half of the value as determined per Section 18726, unless the gift is peculiarly adaptable to the personal use or enjoyment of one spouse or specifically and unequivocally intended *exclusively for use or enjoyment by one spouse*, in which event the full value of the gift is attributed to that spouse.” [Emphasis added.]

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<sup>4</sup> Although wedding gifts are not subject to the gift limit, they are subject to the \$10 lobbyist/lobbying firm gift limit,

<sup>5</sup> Note that wedding gifts from close family members specified in Section 82028(b)(3) and Regulation 18942(a)(3), fall under the exception to the definition of a “gift” and therefore are not reportable or subject to limits.

Therefore, you are required to report wedding gifts with a total market value of \$100 or more unless it is for the exclusive use of your spouse.<sup>6</sup> For example, if you received a gift worth \$70, you are deemed to have received one-half of the value as a gift to you, or \$35. You would not be required to report this gift because it does not reach the fifty (\$50) reporting threshold. However, if a particular gift you received is worth \$120, you are the recipient of one-half of the value, or sixty (\$60). Because this gift to you is worth more than fifty (\$50), you must report the receipt of this gift on your Form 700.

### **Gifts to Family Members:**

As a general rule, a single gift given to a public official or candidate and one or more members of the official's immediate family is a gift to the official for the full value of the gift if it confers a personal benefit on the official. (Regulation 18944, enclosed.)

Therefore, if you and your wife receive a single gift, and you enjoy direct benefit from the gift, use the gift, or exercise control over it, then the full value of the gift is reportable on your Form 700.

### **Spouse's Income:**

The Commission has long advised that a public official has a reportable economic interest in the source of a spouse's income, once the income from that source aggregates to a total of \$1,000 or more within any 12-month period.<sup>7</sup> This is because California is a community property state where the default presumption of the law is that each spouse has equal rights in property of "the community." Because community property law provides that a public official has rights in the income earned by his or her spouse, the source of a spouse's income is a source of income to the public official under the Act. The Act's definition of the term "income," at Section 82030 expressly refers to community property interests in a spouse's income, consistent with state law in this area.

Therefore, you are required to report your wife's income on your Form 700 unless it meets one of the exceptions under Section 82030(b) such as salary from the state, local, or federal government.

### **Spouse's Inheritance:**

In addition, Section 82030(b)(3) provides that income does not include "[a]ny devise or inheritance." Receipt of an inheritance is neither a gift nor income. (Sections 82028(b)(5) and 82030(b)(3).)

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<sup>6</sup> Note that you must report wedding gifts of \$50 or more if it is for your exclusive use.

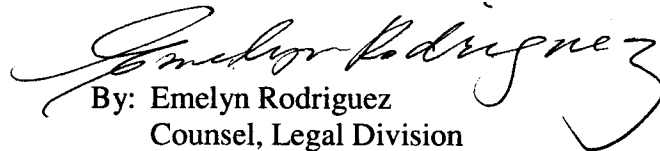
<sup>7</sup> The Commission presumes an equal interest in the income of a spouse. As a result, when an official's spouse earns \$ 1,000 or more from any one source during a 12-month period, the official's "share" of that income is \$ 500, the reporting threshold specified by the Act.

Therefore, you are not required to report any inheritance your wife receives inheritance from her family. However, note that if the inheritance is subsequently converted into a reportable interest (for example cash into a stock investment), then you will be required to disclose it on your Form 700.

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

Sincerely,

Scott Hallabrin  
General Counsel

  
By: Emelyn Rodriguez  
Counsel, Legal Division

ER:jgl

Enclosures