



FAIR POLITICAL PRACTICES COMMISSION

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June 4, 2009

Ted C. Radosevich
District Counsel
2950 Peralta Oaks Court
P.O. Box 5381
Oakland, CA 94605

**RE: Your Request for Informal Assistance
Our File No. I-09-099**

Dear Radosevich:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ This letter is based 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.) Because you seek general information, we are treating your request as one for informal assistance.²

QUESTIONS

1. Are tickets and passes provided by the East Bay Regional Park District ("park district") to its directors for a non-profit fundraising dinner gifts to the agency under Regulation 18944.1 or to the official when the tickets were provided to the park district by members of the community?
2. If a ticket or pass to attend a fundraising dinner for the park district is provided directly to a district official by a member of the community is the ticket considered a gift to the agency or the official?
3. Are the answers to questions 1 and 2 any different if *any* employee of the Park District is provided the tickets?

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

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; regulation 18329(c)(3), copy enclosed).

4. Under Regulation 18946.4, is an official required to report receipt of a ticket provided by a political action committee to attend a fundraising event for a candidate for public office?

5. Under Regulation 18946.4, is an official required to report receipt of a ticket provided by a local employee union to attend a fundraising event for a candidate for public office?

CONCLUSIONS

1. Tickets to nonprofit fundraising dinners are generally treated as gifts to the official under Regulation 18946.4. Even if the "ticket" is provided to the official by the official's agency, Regulation 18944.1 would not apply because the ticket is not for admission to an *event or facility* "for an entertainment, amusement, recreational, or similar purpose."

However, under certain circumstances, events that provide no benefits other than food and beverages (the luncheon and dinner events) and where the admission is provided by the agency to the officials who are attending the events as part of their agency duties, Regulation 18944.2 or Regulation 18944.3 may apply. (See discussion below.)

2. The ticket is considered a gift to the official and is reportable at its full face value. This is because the ticket is provided by a third-party to the official and not provided by the non-profit organization that is hosting the event. Therefore, the exception provided in Regulation 18946.4 does not apply.

3. No, unless the employee is *not* a statutory filer under Section 87200 or designated in a class that requires reporting of income or gifts from the particular source. If the official is not a statutory filer or a "designated employee," he or she does not have any reporting obligations.

4. Under Regulation 18946.4, one ticket provided directly by the political action committee to the official for its fundraising event, has no value.

5. Regulation 18946.4 does not apply in this case. The official must report the full face value of the ticket because it is not offered directly by the group organizing the fundraiser.

FACTS

You are the district counsel for the park district, a two-county special district providing park and open-space to the residents of Contra Costa and Alameda Counties. You seek advice on behalf of the Board of Directors, which is composed of seven elected

officials. The Regional Parks Foundation ("Foundation") is a private 501(c)(3) non-profit that is dedicated to the sole purpose of supporting the Park District and its mission. The Foundation holds various fundraising events such as "Diamond in the Rough." Tickets for these events are purchased by park supporters, including businesses in the community. Occasionally, a business or community group will purchase a table and provide extra tickets to board members or staff to attend the event.

Board members also occasionally receive tickets to attend political fundraising events for individuals running for local, state, or national office. These tickets are provided to the official either by a political action committee or local employee union.

You wish to know whether certain tickets are reportable gifts to the park district directors and employees of the park district.

ANALYSIS

The Act establishes a statutory and regulatory scheme to reduce influences on public officials³ from the receipt of gifts. First, it prohibits certain public officials from accepting large gifts (currently defined as more than \$420) from identified sources. (Section 89503, Regulation 18940.2.) Second, it requires certain public officials to disclose their receipt of any gift of \$50 or more from identified sources, so that the public is made aware of such gifts. (Sections 87207 and 87302.) Finally, it prohibits a public official from using his or her position to influence the outcome of a decision involving the donor of a gift valued at \$420 or more. (Section 87100, 87103(e), Regulation 18940.2.)

Section 82028 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 and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status."

Your letter requests advice with respect to the gift disclosure provisions of the Act. Public officials who are covered by the Act's gift disclosure provisions are required to disclose gifts from certain specified sources pursuant to the terms of their agency's conflict-of-interest code, formulated in accordance with the Act's provisions.

Questions 1-2: As is evident from the above definition, tickets and passes to charitable events are "gifts" under the Act if they provide a personal benefit for which no consideration is provided. However, several regulations under the Act may affect how

³ Section defines "public official" as every member, officer, employee or consultant of a state or local government agency. Employees of the park district are public officials.

such tickets or passes are valued. For example, Regulation 18946.4 specifically addresses valuation for tickets or passes to charitable events. It provides:

“18946.4: This regulation applies to a *single ticket* or other admission privilege to a specific fundraising event provided to a public official by a nonprofit or political organization holding its own fundraiser and used solely by the public official.

“(a) Nonprofit Fundraiser. Except as provided in subdivision (b), the value of a gift of a ticket, pass, or other admission privilege to a fundraising event for a nonprofit, tax-exempt organization that is not a committee covered by subdivision (c) is determined as follows:

“(1) Where the ticket clearly states that a portion of the ticket price is a donation to the organization, the value of the gift is the face value of the ticket reduced by the amount of the donation.

“(2) If there is no ticket indicating a face value or the ticket or other admission privilege has no stated price or no stated donation portion, the value of the gift is the pro rata share of the cost of any food, and beverages, plus any other specific item presented to the attendee at the event.

“(b) 501(c)(3) Organization Fundraiser. Where the event is a fundraising event for an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the organization may provide one ticket per event to an official and that ticket shall be deemed to have no value so long as the cumulative value of the nondeductible portion of the ticket(s), as provided in subdivision (a), received by the official from the same organization during a calendar year, does not exceed the gift limits imposed under Section 89503 and Regulation 18940.2. [Emphasis added.]

{...}

Under this regulation, an official may receive one ticket to each fundraising event a 501(c)(3) organization holds during a calendar year up to a cumulative value of \$420, and the ticket *is not a gift if, and only if, the organization provides the ticket to the official.*

Additionally, Regulation 18944.1 (copy enclosed) provides certain exceptions to the Act’s gift rules when an official receives a ticket or pass to attend an event to perform an official or ceremonial function related to his or her office, such as accepting an award or plaque, the admission privilege is not a gift to the official. (Regulation 18944.1(a).)

Regulation 18944.1(b) also provides a method by which certain types of tickets or passes provided to an official by his or her agency will not be considered gifts because

the official will meet the burden, under the Act's definition of gift, that equal or greater value has been provided in exchange therefor, as discussed below. However, this regulation applies only to tickets or passes provided to the official by his or her agency to an event or facility "for an entertainment, amusement, recreational, or similar purpose." Therefore, the regulation would only apply to tickets or passes provided by your agency to officials in the agency to attend "charitable balls, golf tournaments, and music festivals," but not to "luncheons and dinners." (*Scott Advice Letter, I-09-104.*)

In your request for advice, you state that the events to which you refer are charitable fundraising events where sponsors or individuals purchase either a table or a seat for a luncheon or dinner. The event you refer to in your request is for a non-profit "fundraising dinner" and not an event "for entertainment, recreational, or similar purpose.

Accordingly, the provisions of Regulation 18944.1 would not apply even if the "ticket" is provided to the official by the official's agency. Regulation 18944.1 would not apply because, as explained above, the "ticket" is not for an admission to an event or facility "for an entertainment, amusement, recreational, or similar purpose." Regulation 18946.4 would normally apply in these cases.

Enclosed please find a fact sheet regarding "Tickets to Nonprofit and Political Fundraisers: FPPC Regulation 18946.4 as Amended," which provides more detailed information.

However, with respect to events that provide no benefits other than food and beverages (the luncheon and dinner events) and where the admission is provided by the agency to the officials who are attending the events as part of their agency duties, Regulation 18944.2 or Regulation 18944.3 may apply.

Regulation 18944.2 (copy enclosed) applies to payments, other than tickets and passes for entertainment, recreational and similar events covered under Regulation 18944.1, made to an agency from an outside source that are used for the purpose of agency business. If the agency follows the requirements of Regulation 18944.2, there is no gift to the official. Assuming the official is attending a luncheon or dinner on official agency business, Regulation 18944.2 could apply to these charity events.

Additionally, Regulation 18944.3, which is applicable when an agency expends its own resources,⁴ could apply if the agency provides to its officials tickets its purchases from the charitable organization with its own funds. This regulation would apply if the payment for the meal at the event is a lawful expenditure of public moneys, and the official's meal would not be a gift under the Act.

⁴ Other than tickets to events under Regulation 18944.1.

Tickets or Passes Provided Directly to the Official by Outside Sources

In your request for advice, you indicate that admissions to the charitable fundraisers are sometimes provided directly to park district officials by members of the community who have purchased them directly from the charitable organization.

In these cases, the value of the ticket is the full face value of the purchase, including the amount of the donation.

If the tickets are provided directly from the nonprofit organization to the officials, Regulation 18946.4 would apply as follows: If the nonprofit organization is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, the tickets or admission has no value so long as the portion of the ticket value that is not tax-deductible (either by itself or when cumulated with the value of other gifts from the organization in the same calendar year) does not exceed the \$420 gift limit applicable to the official. If that portion exceeds the limit, the official cannot accept the ticket.

If the nonprofit organization is not a 501(c)(3) organization, the value of the ticket is the non-deductible portion of the ticket value or if there is no ticket or the tax-deductible portion is not stated, the value is the pro-rata share of the cost of any food and beverages plus any specific item provided to the attendee at the event. This value also cannot exceed the \$420 gift limit applicable to the official.⁵

Question 3: The provisions of Regulation 18944.1 and 18946.4 apply to all those who have filing obligations under the Act. This includes both statutory filers under Section 87200 and those agency "designated employees" who file pursuant to an agency's adopted conflict-of-interest code.

If the official is not a statutory filer or a "designated employee" required to report income or gifts from the source, he or she does not have any reporting obligations.

Questions 4 and 5: Regulation 18946.4(c) provides:

"Political Fundraiser. For a gift of a ticket, pass, or other admission privilege to a fundraising event for a committee defined in Section 82013(a), or a comparable committee regulated under federal law holding an event in California, the committee or candidate may provide one ticket per event to an official and that ticket shall be deemed to have no value."

Therefore, the official may accept one ticket *provided directly by the political action committee* to the official for its fundraising event. However, if the ticket to the

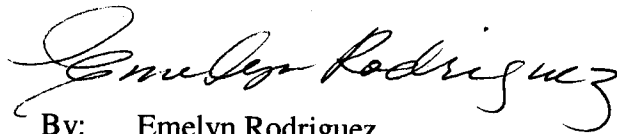
⁵Regulation 18944.1(b)(1) permits an official to treat a ticket or pass provided to the official by his or her agency as income, and not a gift, if done in a manner consistent with applicable tax laws. The value of the ticket or pass is its face value if it is treated as income.

political fundraising event is provided by a third-party to the official, the official must report the full face value of the ticket and is subject to the \$420 gift limit if applicable for that official to the source of the gift.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script that reads "Emelyn Rodriguez".

By: Emelyn Rodriguez
Commission Counsel

ER:jgl

Enclosures