



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

July 20, 2009

The Honorable Lou Correa
California State Senate
State Capitol, Room 5052
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-09-162

Dear Senator Correa:

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 does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. May the California Biotechnology Foundation (the "CBF") pay the costs related to your participation in a forum in Tokyo, Japan, including, but not limited, to the costs of your international airfare, lodging, meals, and transportation while in Japan?
2. Who would be considered the source of the gift if the CBF solicited and accepted donations from California and Japan based biotechnology companies and associations, Japanese government entities, or other interested parties to defray the costs of the forum including the costs related to your participation?

CONCLUSIONS

1. Travel payments made by the CBF for your international airfare, lodging, meals, and transportation in Japan, are gifts subject to reporting but unrestricted by the Act's gift limit. As reportable gifts, these payments may require you to disqualify yourself from governmental decisions affecting the CBF under the Act's conflict-of-interest provisions. Other payments made by the CBF during the course of your trip are

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.

reportable gifts subject to the gift limit to the extent that the payment is not a travel expense *reasonably related* to a legislative or governmental purpose, or to an issue of state, national, or international public policy. In addition, payments made for *necessary* accommodations and subsistence made *directly* in connection with a speech given or other similar activity are not considered gifts and are exempt from both the gift limit and reporting.

2. The CBF will be considered the source of any payment it makes related to your participation in the forum so long as the CBF, and not the soliciting sponsors, directs and controls the payment.

FACTS

You have been contacted by the CBF, a 501(c)(3) nonprofit organization, regarding your potential participation in a biotechnology educational forum. This forum is being organized and arranged by the CBF with public and private sector participants from Japan and California. The forum is tentatively scheduled for November, 2009, in Tokyo, Japan.

At this time, the CBF is considering inviting you, in your capacity as a California state senator, to attend and participate in the forum and associated events and meetings. All costs associated with your participation would be paid by the CBF including, but not limited to, international airfare between California and Japan, lodging, meals, and transportation expenses while in Japan.

The CBF will be soliciting sponsors for the forum. Potential sponsors include California and Japan based biotechnology companies and associations, Japanese government entities, and other interested persons. The sponsors' funds will be commingled and used to pay for costs associated with the forum including those costs related to your proposed participation. Event sponsors will not direct the spending of the funds collected by the CBF.

ANALYSIS

Gifts

The term "gift" is defined in Section 82028(a) 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.”²

In an effort to reduce improper influences on public officials,³ the Act regulates the receipt of gifts by public officials in three ways that are relevant to your question:⁴

First, the Act places limitations on the acceptance of gifts by certain public officials. As an elected state officer, you are prohibited from accepting gifts from any single source in any calendar year with a total value of more than the gift limit. (Section 89503(a).) The current gift limit, which is adjusted biennially to reflect changes in the Consumer Price Index, is \$420. (Regulation 18940.2.)

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations requiring certain public officials to disclose the source of any gifts aggregating \$50 or more in value. Section 87203 provides that “[e]very person who holds an office specified in Section 87200 shall . . . file a statement disclosing his [or her] investments, his [or her] interests in real property and his [or her] income . . .” The term “income” includes any gift. (Section 82030.) As a state senator, you hold an office specified in Section 87200. Accordingly, you must report the name and address of each source of gifts aggregating \$50 or more in value. (Section 87207(a)(1).)

Finally, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$420 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18703.4.)

Exceptions for Travel Payments

Notwithstanding the general gift provisions explained above, Section 89506 controls whether a gift of travel is subject to the Act’s gift limit providing the following in pertinent part:

“(a) Payments, advances, or reimbursements, for travel, including

² Section 82044 defines payment, in part, as any “rendering of . . . services or anything else of value, whether tangible or intangible.”

³ A “public official” is “every member, officer, employee, or consultant of a state or local governmental agency.” (Section 82048.)

⁴ The Act also prohibits legislators, among other state officials, from accepting gifts from, or arranged by, a registered state lobbyist in excess of \$10 in a calendar month. (See Sections 86201, 86203, and 86204.) However, since you do not indicate that a lobbyist is involved in making the payments in question, we do not analyze this issue.

actual transportation and related lodging and subsistence that are reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

[9]

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or a by a person domiciled outside the United States which substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.”

In addition, Regulation 18950.3 provides a limited exemption from both the gift limit and gift reporting requirements for admission, refreshments, and similar non-cash nominal benefits on the day of a speech or similar activity, as well as any *necessary* lodging and subsistence provided directly in connection with a speech or similar activity.⁵

Regulation 18950.3 provides:

“Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service . . . and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, are not payments and need not be reported by any filer.”

Under Regulation 18950.3, an official's *necessary* lodging and subsistence, including meals and beverages, provided directly in connection with an event at which the official gives a speech or participates in a panel or seminar are *not* reportable and are *not* subject to gift limits. (Regulation 18950.3.) Please note, however, that what constitutes “necessary” lodging and subsistence for the purposes of this exception is

⁵ Regulation 18950.3 applies only when an official will be giving a speech or similar activity. Regulation 18931.1 defines a “speech given” as a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. We have previously advised that an appearance on a television show to participate in a panel discussion qualifies as a “speech given” by a public official. (*Manson* Advice Letter, No. A-94-308.) However, merely being a “discussant” at a conference, holding informal meetings with a small number of individuals, or making informal remarks at an event would not qualify as giving a speech for the purposes of applying Regulation 18950.3. (See *Wadsen* Advice Letter, No. A-08-135; citing *Hoehn* Advice Letter, No. I-92-392, *Williams* Advice Letter, No. I-95-405, and *Fuller* Advice Letter, No. A-02-307.)

generally limited to lodging and subsistence on the day of the speech, and the day before and after *if necessary* due to travel arrangements. Any accommodations outside these parameters may be considered a gift subject to the normal gift limit and reporting rules.⁶ (*Allen Advice Letter, No. I-94-270; Nishite Advice Letter, No. A-91-568.*)

Under the facts you have provided, it appears that the biotechnology educational forum you have described is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, pursuant to the exception in Section 89506. Moreover, you stated that the payments for the expenses related to your participation in the forum will be made by the CBF, which is a non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Accordingly, payments for your travel, lodging, and related subsistence made by the CBF, though reportable, will be exempt from the Act's gift limit.⁷ Moreover, while you have not indicated whether you will be giving a speech or similar activity while participating in the forum, payments made by the CBF for necessary lodging and subsistence made directly in connection with a speech or similar activity may be exempt for both the gift limit and reporting.⁸

Payments Other than Travel Payments

It is important to note that payments do not qualify for the exceptions for travel payments merely because the payments are made during the course of the trip. Under Section 89506, payments must be *reasonably related* to a legislative or governmental purpose, or to an issue of state, national, or international public policy to qualify for the exception from the gift limit. Under Regulation 18950.3, payments must be *directly related* to the speech or similar activity to be exempt from both the gift limit and reporting. We have previously advised that payments by a 501(c)(3) organization for an official to attend a private concert and to take a tour of a historical battleship, while attending a conference in France, were gifts to the official subject to both the gift limit and reporting, despite the fact that payments by the organization for the official's airfare, hotel accommodations, and meals were only reportable and not subject to the gift limit under Section 89506. (*Federighi Advice Letter, No. A-07-139.*)

⁶ While payments for your international airfare and transportation while in Japan may not be subject to the gift limit under Section 89506, Regulation 18950.3 does not apply to transportation outside of the state of California. Accordingly, payments by CBF for your international airfare and transportation while in Japan are gifts and must be reported accordingly.

⁷ Note, however, that you must disclose payments made by CBF for your participation in the forum under Section 89506 even if the payments are not subject to the gift limit. Additionally, you may also be disqualified from taking part in a governmental decision that affects the CBF, if the payments equal \$420 or more, even if the payments are not subject to the gift limit.

⁸ If you need additional assistance to determine whether any particular payment is directly in connection with a speech and not subject to reporting, it is advisable that you seek further advice providing the relevant facts.

Third Party Payments for Travel

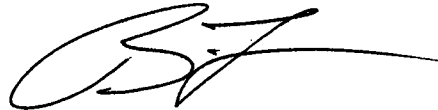
You have indicated that the CBF will be soliciting sponsors for the forum. Accordingly, it is necessary to determine whether the CBF or the sponsors will be considered the source of the payments made for your participation in the forum. We have advised that under some circumstances it is appropriate to pierce through an organization, which appears to be the source of a gift, to the actual donors of funds used to provide the gift. We have said that donors of gifts who utilize intermediary organizations for channeling donations to officials are the true donors to the officials. (*Katz* Advice Letter, No. I-90-269; *Harper* Advice Letter, No. A-87-088.)

“A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.” (Regulation 18945(a).) If a person makes a payment to a third party and in fact *directs and controls* the use of the payment to make a gift to a clearly identified official, the person is the source of the gift to the official. (Regulation 18945(a)(1).) So long as the CBF directs and controls the payment and not the sponsors, the CBF is the source of gift.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Brian G. Lau
Counsel, Legal Division

BGL:jgl