



## FAIR POLITICAL PRACTICES COMMISSION

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July 28, 2010

Tom Pico  
Human Resources Analyst II  
Zone 7 Water Agency  
100 North Canyons Parkway  
Livermore, CA 94551

**Re: Your Request for Informal Assistance  
Our File No. I-10-122**

Dear Mr. Pico:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").<sup>1</sup> 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.) Because your question is general in nature, we are treating your request as one for informal assistance.

### QUESTION

May you accept a \$500 door prize you won at the 2010 annual conference of the Society for Human Resource Management in San Diego?

### CONCLUSION

Yes. Since it appears the competition was a bona fide competition as contemplated by Regulation 18946.5, the prize would not be considered a "gift," but rather would be treated as reportable income.

### FACTS

You are a Human Resources Analyst for Zone 7 Water Agency. On June 29, 2010, you attended the 2010 annual conference of the Society for Human Resource Management (SHRM)

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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.

in San Diego. The district paid for you to attend the conference, and the district also pays for the SHRM membership.

According to their website, SHRM was founded in 1948 and is the world's largest association devoted to human resource management. SHRM has more than 250,000 individual members SHRM and more than 575 affiliated chapters in 140 countries. SHRM's 250,000+ members come from all over the world and all disciplines of human resources. Many of the members are from private sector employers.

According to the website, SHRM exists to:

- Build and sustain partnerships with human resources professionals, media, governments, non-governmental organizations, businesses and academic institutions to address people management challenges that influence the effectiveness and sustainability of their organizations and communities.
- Provide a community for human resources professionals, media, governments, non-governmental organizations, businesses and academic institutions to share expertise and create innovative solutions on people management issues.
- Proactively provide thought leadership, education and research to human resources professionals, media, governments, non-governmental organizations, businesses and academic institutions.
- Serve as an advocate to ensure that policy makers, lawmakers and regulators are aware of key people concerns facing organizations and the human resource profession.

There were a total of 11,300 human resources professionals at the conference. As part of the conference, SHRM held a drawing for cash prizes. Members had to be present to win and had to be a full conference registrant. Of the approximately 9,000 entries, you won a \$500 cash prize.

## ANALYSIS

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."<sup>2</sup>

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<sup>2</sup> Section 82044 defines payment, in part, as any "rendering of . . . services or anything else of value, whether tangible or intangible."

The Act regulates the receipt of gifts by local public officials in three ways that are relevant to your question.

- First, the Act places limitations on the acceptance of gifts by certain public officials. As a local designated employee, 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.)
- Second, the Act imposes reporting obligations requiring certain public officials to disclose the source of any gifts aggregating \$50 or more in value.
- 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.)

However, there are also exceptions to the definition of a gift. One such exception occurs when a prize or award is given in a “bona fide competition.” Regulation 18946.5 provides:

“A prize or an award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient’s status as an official or candidate. A prize or award which is not reported as a gift shall be reported as income.”

In order for a prize to fit within the “bona fide” competition exception, it may not be “related to the recipient’s status as an official or candidate.” (Regulation 18946.5) One of the main factors in making this determination is the nature of the pool of contestants in the competition.

In the *Burns* Advice Letter, No. A-96-324, we advised that where a contest was open to the public and included both public officials and other persons who were not public officials, a prize awarded to a public official in a random drawing was not a gift. The event was a “ribbon cutting” grand opening event for a local business. The event was open to the public.

Similarly, in the *Nemeroff* Advice Letter, No. A-99-148, we advised that a raffle was not related to a contestant’s status as a public official where the contest was open to all, but included state legislators, legislative staff, exempt appointees, and state civil service employees. The event was an annual golf tournament for community leaders, government relations professionals, and public officials. Public officials were likely to make up about 20 percent of the 150 tournament participants.

Under your facts, SHRM has more than 250,000 individual members all of whom could have attended the conference. Membership is not limited to the public sector but also includes

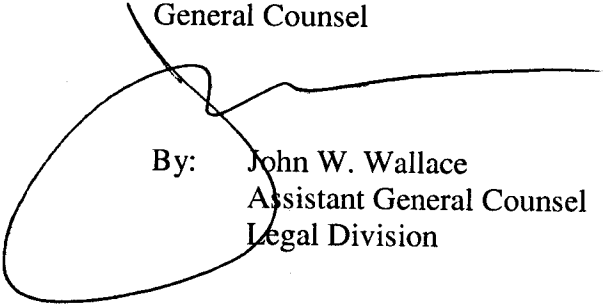
private sector HR professionals. Moreover, you stated that there were a total of 11,300 human resources professionals who actually attended the conference and more than 9,000 entries in the drawing.

Therefore, so long as the drawing was open to all members, both public officials and persons not subject to the Act, the competition would not be deemed related to an individual's status as an official. In addition, if the raffle is conducted in such a manner that the winning ticket holder is determined by chance, the raffle is a "bona fide competition." Thus, the \$500 can be accepted; however, it must still be disclosed as income on your statement of economic interest.

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

Sincerely,

Scott Hallabrin  
General Counsel



By: John W. Wallace  
Assistant General Counsel  
Legal Division

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