



FAIR POLITICAL PRACTICES COMMISSION

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March 15, 2011

Stephen P. Deitsch
Big Bear Lake City Attorney
Best Best & Krieger LLP
3500 Porsche Way, Suite 200
Ontario, CA 91764

Re: Your Request for Informal Assistance
Our File No. I-11-011

Dear Mr. Deitsch:

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 your question is general in nature, we are treating your request as one for informal assistance.² Also, please note that our advice is based solely on the provisions of the Act.

QUESTION

If two or more public officials are traveling to a meeting or conference related to their official duties in the same automobile³ owned by a corporation that is under the sole or majority

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.

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).)

³ We note that you have also sought advice related to transportation provided in a corporate owned airplane or watercraft. However, at this time, we decline to provide general assistance in addition to the criteria previously established by the *In re Stone* opinion. Because it is relatively uncommon for a public official to provide another official free transportation in a corporate airplane or watercraft, the entirety of the circumstances including a full description of the transportation offered and the conditions under which it is offered must be considered prior to determining whether the transportation constitutes a gift. Moreover, the Commission may decline to answer purely hypothetical questions, or questions where the facts presented are insufficient or too vague to render specific advice. (Regulation 18329(b)(2)(B), (8)(C) and (c)(4)(D),(F).)

control of one of the officials, has that official or his or her corporation made a gift to the other officials under the Act?

CONCLUSION

Transportation provided by a public official to other officials, when the officials are attending a meeting or conference for purposes related to their official positions, in the same automobile owned by a corporation under the sole or majority control of the official offering the ride is not a gift to the other officials so long as the official offering the ride is not engaged in corporate activities and does not have or plan to have business before the other officials.

FACTS

You are the City Attorney for the City of Big Bear Lake and are seeking advice regarding the Act's gift provisions relating to transportation provided to public officials from an official from the same agency, or an official from another public agency, when the officials are attending the same meeting or conference for purpose related to their official duties. In particular, you ask whether providing a ride is a gift to the officials accepting the ride if (1) the vehicle is owned in the name of a corporation controlled by the official offering the ride as opposed to the official's personal vehicle and (2) the vehicle is an airplane or watercraft as opposed to an automobile.

ANALYSIS

In an effort to reduce improper influences on public officials,⁴ the Act regulates the receipt of gifts by public officials in three ways:

First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$420 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and any employee designated in his or her agency's conflict-of-interest code, as adopted pursuant to Section 87300, if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interest. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency's conflict-of-interest code as specified in the code (Section 87302(b)).

⁴ A "public official" is "every member, officer, employee, or consultant of a state or local governmental agency." (Section 82048.)

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.)

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.”⁵

While travel is generally presumed to confer some personal benefit on a public official and is therefore a gift to the official if consideration of equal or greater value is not received in return (*Gault* Advice Letter, No. A-07-158), the Commission has previously found that in some instances volunteer personal services rendered as an act of “neighborliness” are not gifts:

“In any tolerable society, people lend assistance to their acquaintances and even to strangers in ways which have theoretical economic value but do not, in any real sense, represent economic transactions. It is absurd to suppose that the repairing of a fence by a neighbor, the offering of a ride, the fixing of a flat tire or hundreds of similarly friendly acts are “gifts” which must be reported under the Act.” (*In re Cory* (1975) 1 FPPC Ops. 153.)

For assistance in determining whether the benefit received by an official is a non-reportable act of “neighborliness” rather than a gift, the Commission has identified the following factors:

- (1) Whether or not the benefit received is an expense that would normally qualify as a business deduction on a tax return.
- (2) Whether or not the donor has, or in the foreseeable future may have, business before the official who receives the service.⁶

⁵ Section 82044 defines payment, in part, as any “rendering of . . . services or anything else of value, whether tangible or intangible.”

⁶ The absence of this factor does not mean that no gift has been provided. However, the presence of this factor will in most cases provide strong, if not conclusive, evidence that a gift has been made. “It may be that the donor has no intent of attempting to influence the official, but the need to avoid even the appearance of possible impropriety is reason alone to require that a service provided to an official under these circumstances be disclosed.” (*Stone, supra*, at p. 54.)


(3) Whether or not the service is normally the subject of an economic transaction. (*In re Stone* (1977) 3 FPPC Ops. 52.)

You have asked that we determine the circumstances in which public officials may accept a ride from another official, when the officials are attending the same meeting or conference for purposes related to their official positions, if the vehicle is owned by a corporation under the sole or majority control of the official offering the ride. As limited by these specific facts, transportation provided in an automobile generally falls within the parameters of an act of neighborliness that does not constitute a gift to the officials accepting the ride. However, we reach this general conclusion only to the extent that the official offering the ride is not engaged in corporate activities and does not have or plan to have business before the other officials.

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