



## FAIR POLITICAL PRACTICES COMMISSION

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April 7, 2011

David Aranda  
General Manager  
North of the River MWD  
4000 Rio Del Norte Street  
Oildale, California 93308

**Re: Your Request for Informal Assistance  
Our File No. I-11-059**

Dear Mr. Aranda:

This letter is in response to your request for advice regarding your duties as General Manager of the North of the River Municipal Water District regarding the gift disclosure and limit provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your request is general in nature and does not relate to a specific situation, we are treating it as a request for informal advice.<sup>2</sup>

### QUESTION

May members of the California Special Districts Association (CSDA) receive free meals from the CSDA in connection with attendance at the CSDA's meetings?

### CONCLUSION

Members of the CSDA may receive free meals from the CSDA in connection with attendance at the CSDA's meetings. However, the members must report the meal payments on Schedule E as income or gifts.

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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 requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), copy enclosed.)

## FACTS

According to their website, the CSDA is a 501(c)(6), not-for-profit association that was formed in 1969 to ensure the continued existence of local, independent special districts, including irrigation, water, park and recreation, cemetery, fire, police protection, library, utility, harbor, healthcare and community services districts.

You are currently the general manager for the North of the River Municipal Water District and have been involved with the CSDA and its various committees in the past. You asked about your disclosure responsibilities with respect to meals provided for members of the CSDA at its meetings.

You pose three hypotheticals. In each case, the recipient board member is participating as a board member in CSDA board meetings:

- \$50 dinners provided once per month to Board Members in closed session.
- Lunch served twice a month to board members valued at \$15-\$20.
- Crackers and cheese made available to members at a value of \$5 per person.

## ANALYSIS

The Act is designed to prevent a public official from making a governmental decision if the official has a financial interest in that decision. (Section 87100.) To prevent conflicts of interest, the Act requires most public officials to file a statement of economic interests ("SEI") each year. Public officials file their SEI on Form 700 disclosing their investments, real property, and income and gifts that they have received during the year. (Section 87200 et seq.) Income is reportable if it equals \$500 or more from a source during the calendar year. Gifts are reportable if it equals \$50 or more from a source during the calendar year.<sup>3</sup> Under the Act, when a third party pays for a public official's meals these payments are generally considered to be gifts. (Regulation 18941.1.)

In addition, the Act prohibits a public official from making a governmental decision that affects an entity or individual that has been a source of income to the official of \$500 or more or a source of gifts of \$420 or more during the 12 months preceding the decision. (Section 87103.)

Finally, the Act prohibits public officials from accepting gifts of more than \$420 per year from a single source. (Section 89503.) Income is not limited.

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<sup>3</sup> Note that you must aggregate multiple payments to determine if you reach one of the reporting thresholds. Thus, the \$50 threshold for gifts might be reached when aggregating several smaller gifts received over the course of the calendar year from a single source.

As noted above, when a third party pays for a public official's meals the Act generally considers payments for these meals to be gifts. (Regulation 18941.1.) However, in some cases, a payment for food in connection with work performed by the official for the source of the payment may be considered income rather than gift. For purposes of the Act, "income" is defined, in pertinent part, in Section 82030(a) as:

"[A] payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan."

The Commission previously advised that city officials serving as board members of the League of Cities, who received reimbursement for their travel to board meetings, must report the travel payments from the League on Schedule E<sup>4</sup> as income or gifts.<sup>5</sup> (*Benninghoven* Advice Letter, No. I-93-298.) Similarly, if members of the CSDA provide consideration of equal or greater value for the meals, they may report the payment as income on schedule E at \$500. If the members did not provide consideration of equal or greater value for the meals, they should be reported at \$50 on schedule E as gifts.

Equal consideration means that each party receives benefits of equal value. (*In re Burciaga* (1975) 2 FPPC Ops. 17.) While we have no exact formula to determine whether an official has provided consideration of equal or greater value, the following general guidelines may be of assistance. The value of services rendered may be proven by evidence as to the customary rate of compensation for such services, irrespective of official status. (*Manulich* Advice Letter, No. I-97-304 and *Allen* Advice Letter, No. A-96-181.) Also relevant in the determination might be the length of time spent rendering the services, or whether the services are of the type not readily available from others. (*Allen* Advice Letter, No. A-96-121.) For example, the duties of the board member attending a board meeting may be sufficient consideration to make meals provided at the meetings income. On the other hand, mere attendance at a conference would not be consideration. Ultimately, however, the determination of whether equal consideration has been provided is necessarily a factual one.

Finally, Section 82030(b)(2) provides that "Income" does not include: "Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation

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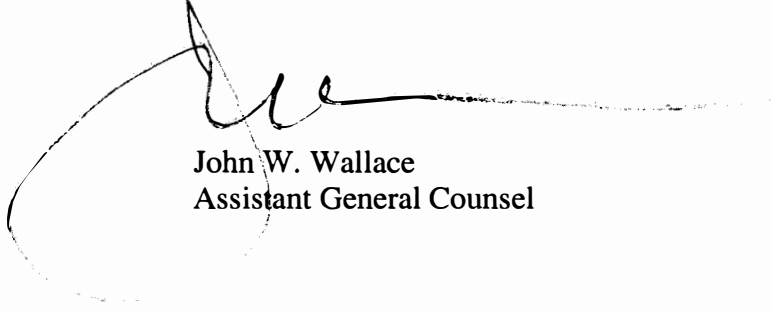
<sup>4</sup> Since the time the *Benninghoven* Advice Letter, supra, was issued in 1993, Schedule F was redesignated as Schedule E.

<sup>5</sup> Any person, other than a defendant in a criminal action, who claims that a payment is not a gift because of receipt of consideration has the burden of proving that the consideration received is of equal or greater value. (Section 82028(a).)

under Section 501(c)(3) of the Internal Revenue Code.” However, since the CSDA is not a government agency or a 501(c)(3) nonprofit organization, this exception would not apply.

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

Sincerely,

A handwritten signature in black ink, appearing to read "JW Wallace", with a long horizontal flourish extending to the right.

John W. Wallace  
Assistant General Counsel

JWW:jgl

Enclosure