



FAIR POLITICAL PRACTICES COMMISSION

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May 3, 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-11-059a**

Dear Mr. Aranda:

This letter is in response to your request for follow-up advice regarding the gift disclosure and limit provisions of the Political Reform Act (the "Act").¹ 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.²

QUESTION

You have clarified that as a teacher of ethics classes for the California Special Districts Association (CSDA) you have been asked if free meals provided by public-entity employers of CSDA members at the public entity's board of director meetings is considered a gift?

CONCLUSION

Free meals provided by public-entity employers to board members at the public entity's board of director meetings is not considered a gift if the member provided consideration of equal or greater value for the payment. The payment for meals is not considered income under Section 82030(b)(2) since they are part of salary and per diem from a government agency.

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), copy enclosed.)

FACTS

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.³

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.

As we discussed in our prior letter, 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.

We previously described the burden on an official to show that the equal consideration was provided in exchange for any payment received. This means that each party receives benefits of equal value. (*In re Burciaga* (1975) 2 FPPC Ops. 17.) This analysis applies to this follow up question as well.

³ 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.

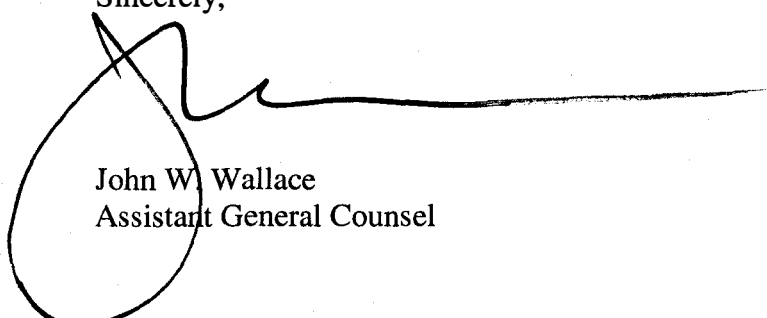
Assuming that the meals are not extravagant, it would appear that the payment by the public agency employers for meals for the board members would be considered per diem under Regulation 18232(b). As such, Section 82030(b)(2) provides:

“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 under Section 501(c)(3) of the Internal Revenue Code.”

Thus, the payment for the meals would not be reportable income.

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

Sincerely,



John W. Wallace
Assistant General Counsel

JWW:jgl

Enclosure