



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 10, 2017

Nicolas Heidorn
Legislative Affairs
California Common Cause
1005 12th St, Suite C
Sacramento CA 95814

Re: Your Request for Advice
Our File No. A-17-022

Dear Mr. Heidorn:

This letter responds to your request for advice regarding the gift and lobbying provisions of the Political Reform Act (the "Act").¹

QUESTION

May an in-house lobbyist drop off or present a plaque or award worth less than \$250 to a legislator that the lobbyist and its lobbyist employer are registered to lobby? If so, would this be a reportable activity expense?

CONCLUSION

Yes, the lobbyist may present the award to the legislator. The payment for the award is not a gift or a reportable activity expense.

FACTS

You are Legislative Affairs Director with Common Cause. Common Cause is a lobbyist employer and it employs you as an in-house lobbyist. Common Cause plans to pay for a plaque or trophy under \$250, and have you either drop it off or present the award to a legislator that both you and Common Cause are registered to lobby.

You wish to know if you, as Common Cause's in-house lobbyist, may arrange for the legislator to receive this award. And if so, would the payment for the award be a reportable activity expense.

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.

ANALYSIS

Gifts:

Section 82028 defines a “gift” under the Act 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. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

(b) The term “gift” does not include:

...

(6) Personalized plaques and trophies with an individual value of less than two hundred fifty dollars (\$250).

Section 86201 defines “gift” under lobbyist prohibitions Section of the Act:

“Gift” as used in this article means a gift made *directly or indirectly* to any state candidate, elected state officer, or legislative official, or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist. (Emphasis added.)

Section 86203 (lobbyist gift limit) states that:

It shall be unlawful for a lobbyist, or lobbying firm, to make gifts to one person aggregating more than ten dollars (\$10) in a calendar month, or to act as an agent or intermediary in the making of any gift, or to arrange for the making of any gift by any other person.

Lobbyists are subject to more stringent gift prohibitions and rules under the Act. For instance, lobbyists have a \$10 gift limit under Section 86203. In addition, the lobbyist prohibitions relating to gifts are broader in scope² than rules applicable to public officials in general.³ For instance, the \$10 lobbyist gift limit even applies to state officials that the lobbyist is not registered

² The lobbyist \$10 gift limit applies to gifts made *directly or indirectly* to any state candidate, elected state officer, or legislative official or to an agency official of any agency required to be listed on the registration statement of the lobbying firm or the lobbyist employer of the lobbyist. (Section 86201, emphasis added.)

³ Public officials cannot accept gifts from any single source required to be reported in their Form 700 (Statements of Economic Interest) in any calendar year with a total value over the gift limit of \$470. (Section 89503.)

to lobby.

You ask about whether you may provide a legislator you are registered to lobby, a personalized plaque or trophy worth under \$250.

This item falls under the exception to the definition of gift under Section 82028(b)(6). Therefore, you would not be prohibited from arranging or providing the legislator with the personalized plaque or trophy.

Activity Expenses:

Section 86111 defines an activity expense:

(a) "Activity expense" as used in this chapter means any expense incurred or payment made by a lobbyist, lobbying firm, lobbyist employer or a person described in subdivision (b) of Section 86115, or arranged by a lobbyist or lobbying firm, which benefits in whole or in part any elective state official, legislative official, agency official, state candidate, or a member of the immediate family of one of these individuals. Activity expenses include gifts, honoraria, consulting fees, salaries, and any other form of compensation but do not include campaign contributions. (Emphasis added.)

The Commission has addressed this issue in the past and approved a reporting exception for a personalized plaque or trophy worth less than \$250 when it approved changes to the FPPC Lobbying Disclosure manual stating that this item is not a gift and the donor is not required to report it as an activity expense.

The FPPC's current Lobbying Disclosure Information Manual, in the section titled "Exceptions to Activity Expenses" at page 4.13 states:

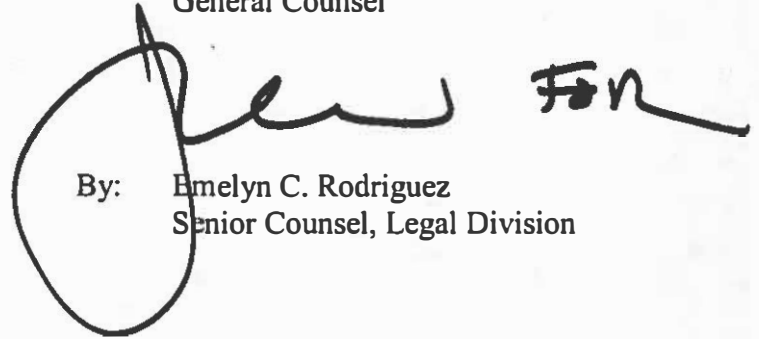
"A personalized plaque or trophy valued at less than \$250 is not a gift to a public official and the donor does not report it as an activity expense."

At its September 3, 1998 meeting, the Commission approved the FPPC Lobbyist manual with this language. The meeting minutes indicate the California Political Attorneys Association argued for the change stating that "if trophies are excluded from the definition of gift they should not be an activity expense, and that the Commission should rescind the *Davis* Advice Letter A-88-018" which required plaques to be reported as an activity expense. That advice letter was rescinded.

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

Sincerely,

Hyla P. Wagner
General Counsel

A handwritten signature in black ink, appearing to read "Emelyn C. Rodriguez". The signature is written in a cursive style with a large, looping initial "E".

By: Emelyn C. Rodriguez
Senior Counsel, Legal Division

ECR:jgl