



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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September 10, 2018

Eric B. Milstein  
Assistant Chief Counsel  
CA Department of Fish and Wildlife  
Office of Spill Prevention and Response (OSPR)  
Legal Unit  
1700 K Street, Suite 250  
Sacramento, CA 95811

Re: Your Request for Advice  
**Our File No. A-18-103**

Dear Mr. Milstein:

This letter responds to your request for advice on behalf of the California Department of Fish & Wildlife, Office of Spill Prevention and Response regarding the gift provisions of the Political Reform Act (the "Act").<sup>1</sup>

Also, note that we are not a finder of fact when rendering advice (In re *Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

### QUESTION

Are three to four-day rides taken on a tanker ship of the type regulated by OSPR for the purpose of observing current practices and procedures to assist in with development of laws and regulations of these tankers considered gifts to OSPR staff when such trips include accommodations and meals?

### CONCLUSION

No. The ride on the tanker, meals and accommodations are not considered gifts to OSPR staff because they fall within the informational material gift exception.

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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.

## FACTS

You are the Assistant Chief Counsel for the OSPR. As part of OSPR's regulatory and response authority OSPR is tasked with developing best achievable protections and technologies, performance standards, improving response to oil spills, and evaluating new technologies. OSPR has jurisdiction over both inland facilities and certain vessels (i.e. tankers) in marine waters. Generally, tanker trips are transoceanic so the opportunity to observe the latest equipment and procedures first-hand on these vessels is not possible. OSPR routinely observes onshore and inland operations to gather this sort of information specific to those operations.

One of the shipping companies OSPR regulates has recently started making coastal trips as part of their normal operations. This is unique and at this time they are the only shipping company doing this. OSPR staff have been given the opportunity to board one of these tankers in one California port, ride the ship for about three or four days, and disembark in another California port. The purpose of these trips would be to observe current practices and procedures to assist with developing new regulations and possibly other laws to better protect the California environment.

During these trips, OSPR staff (two or three per ship) are assigned a bunk to sleep in and provided meals in the ship's galley-basically a cafeteria style dining facility. There is no other place to sleep or eat during these trips. You would like to know if these accommodations and meals are reportable as gifts.

## ANALYSIS

### **Gifts, Generally**

One purpose of the Act is to reduce improper influences on public officials through gift giving. Section 82028(a) of the Act defines a gift as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received," including "a rebate or discount [...] unless the rebate or discount is made in the regular course of business to members of the public without regard to official status."

The Act imposes three requirements on state and local officials who receive gifts. First, state and local officials may not accept gifts totaling more than \$470 in a calendar year from a single source. (Section 89503, Regulation 18940.2.) Second, certain state and local officials must report any gift of \$50 or more (or gifts that aggregate to \$50 or more from the same source) received during the calendar year on their statements of economic interests. (Sections 87200 - 87210.) Third, a public official may not make, participate in making, or use their position to influence the outcome of a governmental decision if the decision involves someone who gave the official a gift(s) worth \$470 or more and the gift was given within 12 months leading up to the governmental decision. (Sections 87100 and 87103(e).)

***“Informational Material” Exception***

Regulation 18942 provides:

“For purposes of Sections 82028, 82030, and the gift regulations, except as otherwise indicated, the following payments that otherwise meet the definition of gift as provided in Section 82028, subdivision (a) are neither gifts nor income:

“(1) Informational material as defined by Regulation 18942.1.”

Regulation 18942.1 provides:

“Informational material” means any goods or service that serves primarily to convey information and that is provided to the official for the purpose of assisting him or her in the performance of his or her official duties or the duties of the elective office he or she seeks. “Informational material may include:

“(a) Books, reports, pamphlets, calendars, periodicals, photographs, audio and video recordings, flash drives, CD-ROMS, or DVD ROMS or other similar recordings, or free or discounted admission to informational conferences or seminars.

“(b) Scale models, pictorial representations, maps, and other such items, provided that when the item has a fair market value in excess of the gift limit amount specified in Regulation 18940.2, the burden shall be on the recipient to demonstrate that the item is informational material”

Regulation 18942.1(c) provides a limited exception for travel as informational material. Informational material includes:

“(c) On-site demonstrations, tours, or inspections. Transportation provided to or in connection with an on-site demonstration, tour, or inspection is also considered ‘informational material’ when any of the following apply:

“(1) The transportation serves as the means by which the information is conveyed and is integral to the conveyance of the information, such as an aerial tour over an area.

“(2) The transportation is provided solely at the site of a demonstration, tour, or inspection, including to and from an area of that site that is legally inaccessible to the public.

“(3) The transportation is to or from a site when there is no reasonable, publicly-available commercial transportation available to that site and the transportation provided is limited to the segment for which public transportation is not available.”

Within very narrow parameters, "informational material" may include both tangible and intangible materials. For example, a private guided tour of a nuclear power plant which is unavailable to the public constitutes informational material and therefore the value of the tour is not a gift to the official. (*In re Spellman* (1975) 1 FPPC Ops. 16.) Similarly, where the Nature Conservancy provides a public official with a tour of Santa Cruz Island, the cost of the tour is not a reportable gift but rather constitutes intangible informational material excluded from the definition of gift under Section 82028(b)(1).

While informational material does not normally include meals or lodging costs we have advised under very narrow circumstances that such items may fall within the exception. In the *Ewing* Advice Letter, No. I-89-480 public officials traveling to Europe to learn about high speed rail trains were advised that the cost of the high-speed train travel, meals and accommodations on board such trains, when part of the train ride and unavailable otherwise, are excluded from the definition of gift and fall within the informational material exception.

In OSPR's case, agency officials will be conducting an on-site tour to observe current practices and procedures to assist with their duties in developing new regulations and possibly other laws to better protect the California environment. The transportation would serve as the means by which the information is conveyed and is integral to the conveyance of the information. Therefore, the transportation would fall under the limited exception for travel as informational material and is not a gift to the officials attending the tour. In this very narrow circumstance the lodging and meals provided as part of the voyage (a bunk to sleep in and cafeteria style dining facility) also fall within the informational material exception and are not gifts to the officials because these items are part of the voyage and there is no alternative place to obtain food and lodging.

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

Sincerely,

Brian G. Lau  
Assistant General Counsel



for

By: Sukhi K. Brar  
Senior Counsel, Legal Division

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