



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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July 24, 2019

Sandra Nakagawa
State Capitol, Room 3146
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-19-123

Dear Ms. Nakagawa:

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

Please 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

1. Is a ten-year reunion camping trip paid for by the California Council on Science and Technology's Alumni Network Steering Committee (the "Alumni Network") for current and former fellows a reportable gift to fellows that are public officials under the Act and are required to file a Statement of Economic Interest ("Form 700")?
2. If the trip is a reportable gift, how is the amount of the gift calculated?

CONCLUSION

1. Yes. Payments by the Alumni Network for current and former fellows that are public officials and their guests to attend a reunion camping trip are reportable gifts to the public officials who attend the trip. These gifts are also subject to the Act's gift limit and conflict of interest provisions.
2. The reportable amount of the gifts is the fair market value of the gifts received by the public officials and their guests. If the fair market value cannot be determined because the gift is unique or unusual, the official must make a reasonable approximation by taking into account the

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.

price of similar items, or a good faith estimate if similar items are not available. This includes costs for the use of the campgrounds, use of equipment, meals, beverages, and any other item provided to the officials and the officials' guests.

FACTS AS PRESENTED BY REQUESTER

You are a legislative aide in the Office of Assembly member Mark Stone. You are seeking advice on behalf of yourself and on behalf of public officials attending an upcoming ten-year reunion for current and former fellows from the California Council on Science and Technology's fellowship program (a.k.a., science fellows). The fellows invited to the camping trip have authorized you to seek advice on their behalf. During the fellowship year, individuals are placed in legislative offices in the Senate or Assembly (and previously in the executive branch) and they are required to file Form 700 disclosures during the fellowship year. After the fellowship year, many fellows continue to work for the Legislature and others work for state agencies, other government entities, private employers, and/or become registered lobbyists. You were a fellow in the Assembly Judiciary Committee from December 2017 through October 2018. Since November 2018, you have worked as a legislative aide for Assembly member Mark Stone.

This year, the California Council on Science and Technology (a 501(c)(3) non-profit organization) and specifically the Alumni Network -- an entity within the California Council on Science and Technology, is celebrating 10 years of the fellowship with a group camping trip from the evening of Friday, July 26th through Sunday July 28th, 2019. The camping trip will take place on privately owned land that the California Council on Science and Technology has been given access to for the weekend of the trip. The land belongs to an individual who formerly held office as an elected representative in the US Congress (the individual also held state legislative and county offices in California, but currently does not hold an elected office or have an official government position). The Alumni Network will provide food and drinks to those attending the camping trip at no cost and may rent camping equipment related to the camping trip, if needed. All current fellows and fellows from prior years are invited and can bring partners and children on the trip. The Alumni Network is being charged \$30 per person by the land owner for use of land during the weekend and will be paying for this \$30 cost for the fellows and for their children and partners.

ANALYSIS

Gifts Generally

A gift is 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 is made in the regular course of business to members of the public without regard to official status. (Section 82028.) A gift must be reported if it is a gift valued at \$50 or more from a single source in a calendar year. (Section 87207.) The annual gift limit is \$500. (Regulation 18940.2.) A gift to a family member of an official may also be considered a gift to the official. (Regulation 18943.) Additionally, an official receives a gift when he or she exercises direction and control over a gift, even if it is ultimately turned over to another person for use. (Regulation 18941(b).)

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 that would have a reasonably foreseeable material financial effect upon the donor of a gift or gifts with an aggregate value of \$500 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, 18702.4.)

As provided in the facts, the Alumni Network has invited current and former fellows and their guests, which could include partners and children, to attend a camping trip for a weekend at no cost to the fellows. The Alumni Network is paying \$30 for each fellow and their guests to use the land to camp on, is providing meals and beverages for all attendees for the weekend and may rent camping equipment for attendees as needed. The fellows do not pay membership fees or dues to the Alumni Network and are not expected to pay any amount for the camping trip.

Therefore, it appears the Alumni Network is not receiving consideration of equal or greater value and the value of the camping trip is a reportable gift subject to limits under the Act unless an exception applies.

Gift Valuation:

Generally, a gift is valued at fair market value as of the date of receipt, unless it is a unique gift or ticketed events. (Regulation 18946.) For unique gifts, if the fair market value cannot be determined, the official must make a reasonable approximation by taking into account the price of similar items, or a good faith estimate if similar items are not available. (Regulation 18946.)

Exception: Travel Payments, Advances, and Reimbursements

Gifts of travel are generally reportable and subject to limits unless the travel falls under an exception. Section 89506(a)(2) sets forth an exception to the gift limit for certain travel payments, advances, and reimbursements, and provides in pertinent part as follows:

“(a) Payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence that *is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy*, are not prohibited or limited by this chapter if either of the following applies:

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

Thus, Section 89506(a)(2) provides that travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international policy, are not prohibited or

limited if they are provided by certain specified sources such as governmental agencies, bona fide public or private educational institutions, or non-profit 501(c)(3) organizations.

The facts provided state that the California Council on Science and Technology is a 501(c)(3) non-profit organization; however, there are no facts indicating the camping trip is reasonably related to a legislative or governmental purpose, only that the camping trip is planned for the sole purpose of having an alumni reunion.

Accordingly, the Alumni Network camping trip does not fall within this travel payment exception and would be considered a reportable gift.

Gifts to Family Members of a Public Official

Pursuant to Regulation 18943, a gift to a public official's family member is a gift to the official if there is no established working, social, or similar relationship between the donor and the family member that would suggest an association between the donor and the family member suitable or appropriate for making the type of payment provided to the family member. A family member is defined as (1) the official's spouse; (2) dependent child; and (3) a child that is at least 18 years old but no more than 23 years old and is a full-time or part-time student, has the same principal resident as the official, and does not provide over one-half of his or her own support. (Regulation 18943.)

There are no facts indicating that the California Council on Science and Technology and or the Alumni Network have any sort of relationship with any family members of the fellows invited to the camping trip.

Therefore, the fellows attending the trip who are public officials will also be required to report the gifts received by family members attending the camping trip. As discussed above, the officials will be required to report the fair market value of the gifts received by the fellows' family members and the fair market value of the gifts received by the official. This includes the cost of the use of the land, use of camping equipment and the cost of the meals, beverages, and any other item provided to officials and their family members.

Gifts to Guests of Officials Who Are Not Family Members

An official receives a gift when he or she exercises direction and control over a gift, even if it is ultimately turned over to another person for use. (Regulation 18941(b).) In this case the officials bringing guests are exercising discretion and control over the gifts provided by the Alumni Network because the officials control who they will be inviting. Therefore, gifts provided to the officials, including the costs of use of the land, equipment, food and beverages and other items provided to guests are also attributed to the officials, must be reported and are subject to limits.

Conflict of Interest Disqualification

A public official who receives gift(s) of \$500 or more in a calendar year may have a financial conflict of interest under the Act if there is a reasonably foreseeable material financial effect upon the source of the gift as a result of a governmental decision that is before the public

official in his or her official capacity. (Section 87103.) If a conflict of interest exists, the official must disqualify himself or herself from voting or otherwise taking part in a governmental decision affecting the source of the gift if the gift was provided, received by, or promised to the official within the 12 months preceding the decision.

Therefore, if the officials accept gifts from the Alumni Network valued at \$500 or more, in addition to violating the Act's gift limit, the officials will be prohibited from taking part in governmental decisions with a foreseeable and material financial effect on the California Council on Science and Technology and the Alumni Network.

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

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in blue ink, appearing to read "Katelyn Greene" followed by the initials "laja".

By: Katelyn Greene
Counsel, Legal Division

KG:aja