



FAIR POLITICAL PRACTICES COMMISSION

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March 12, 2003

Norbert J. Bartosik
California Exposition & State Fair
Post Office Box 15649
Sacramento, CA 95852-1649

**Re: Your Request for Informal Assistance
Our File No. I-03-011**

Dear Mr. Bartosik:

This letter is in response to your request for advice on behalf of the California Exposition and State Fair Board of Directors (the "Board") regarding the gift provisions of the Political Reform Act (the "Act").¹ Because your letter does not seek advice regarding a specific governmental decision, we are treating your request as one for informal assistance.²

Please note that nothing in this letter should be construed to evaluate any conduct that may have already taken place. The Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).)

QUESTION

Would the credentials and passes listed below constitute a gift or income to the members of the Board?

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice (Government Code § 83114; 2 Cal. Code of Regs. § 18329(c)(3), copy enclosed.)

CONCLUSION

As discussed below, only those passes or credentials given to the members of the Board for their individual attendance at events would constitute income or reimbursement from the California Exposition and State Fair. Many of the passes listed are gifts to the members of the Board, subject to the Act's disclosure and limitation provisions.

FACTS

The California Exposition and State Fair is a separate independent entity in state government governed by the Food and Agricultural Code. The 11 members of the Board serve at no pay. Each year board members are provided with a number of various credentials to use and distribute at their discretion to their guests. You are asking which of these items constitute a gift and which constitutes income.

- 36 State Fair admission tickets
- 10 parking passes
- 36 monorail passes
- \$324 worth of script for food and beverage purchases
- One Director's pin (allows parking and admission into the fair for the member and his or her guests)
- 18 guest pins (allows bearer of each pin free admission and free parking; board member may obtain additional pins as needed)
- VIP parking credential in specific parking lots
- Two box seats, plus the Press Box, for Board use at horse racing events (on a first come, first served basis)
- Eight seats per director to all "Arena" events (events taking place during the running of the State Fair)
- Tickets to any and all of the concerts at the Lagoon Stage.

ANALYSIS

The Board of Directors for the California Exposition and State Fair are designated employees within the conflict of interest code for the California Exposition and State Fair. The code requires that the members of the Board disclose all investments, interests in real property, sources of income, as well as any business position in any business entity.

With regard to gifts, the members of the Board are required to disclose gifts valued at \$50 or more received from a single source, unless an otherwise statutory exception applies. Additionally, the members of the Board are prohibited from receiving

gifts valued at more than \$340 per year from any single source if the member is required to report income from that source under the conflict of interest code.³ (Section 89503.)

The term "gift" means "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. . . . 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." (Section 82028.) An official who provides equal or greater consideration for the payment has received income, as opposed to a gift.

"Income" means "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. . . ." (Section 82030(a).) Income does not, however, include "[s]alary and reimbursement for expenses or per diem received from a state, local, or federal government agency." (Section 82030(b)(2).)

The primary distinction between a gift and income is whether the recipient has provided equal consideration in exchange for the payment. If a payment is received and the recipient does not provide consideration of equal or greater value to the source of the payment, the payment will be considered a gift. Conversely, where the recipient can demonstrate that he or she in fact provided equal consideration for the payment, the payment will be treated as income. (*Sodergren Advice Letter*, No. I-93-345.)

The members of the Board function as ambassadors of the California Exposition and State Fair when they attend events at the fair. As such, they are providing equal to greater consideration for their services when they receive a pass for their own attendance, or receive script to offset the cost of their meals. (*Lamoree Advice Letters*, No. A-86-034 and A-86-125.) These payments constitute salary or reimbursements from the California Exposition and State Fair, a state governmental agency, and would not be reportable. However, this only applies to passes or credentials given to a member for his or her individual use.

The passes or credentials given to the members of the Board for distribution to their guests would constitute gifts to the board member. (*Lamoree, supra.*) 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(a).) These gifts are not only reportable on the statement of economic interests, but are also subject to the \$340 gift limit.

In your letter you indicated that some of the passes are given to the members of the Board for use by family members. Those passes or credentials given directly to a spouse or dependent child of a member of the Board are not gifts attributable to that

³ The gift limit amount is adjusted biennially to reflect changes in the Consumer Price Index. The gift limit for calendar years 2001 and 2002 was \$320. Effective January 1, 2003, the gift limit was raised to \$340. (Regulation 18940.2.)

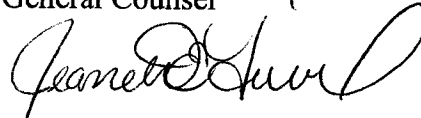
member. (Regulation 18944.)⁴ The members of the Board would not need to take into consideration passes or credentials given directly to a spouse or dependent child for purposes of the disclosure and limitation provisions.

In addition to the gift disclosure and gift prohibition provisions described above, the conflict-of-interest provisions apply as well. The members of the Board are required to disqualify themselves from making or participating in the making of any decision that would have a material financial effect on the source of a gift of \$340 or more promised to, or received by, the member within 12 months prior to the time a decision is made. (Section 87103(e).) Should a member of the Board receive a gift from the California Exposition and State Fair valued at \$340 or more, the member would be precluded from making any decisions affecting the California Exposition and State Fair.

I trust this answers your question sufficiently. If I can provide additional assistance, please do not hesitate to contact me at (916) 322-5662.

Sincerely,

Luisa Menchaca
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Technical Assistance Division

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⁴ "A gift given to the official, but designated for the official and spouse or family, is a gift to the official if the official exercises discretion and control over who will actually use the gift." (Regulation 18944(c).)