



FAIR POLITICAL PRACTICES COMMISSION

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April 9, 2003

Diane Baumann
39th District Agricultural Association
Post Office Box 489
Angels Camp, CA 95222

**Re: Your Request for Informal Assistance
Our File No. I-03-035**

Dear Ms. Baumann:

This letter is in response to your request for assistance on behalf of the 39th District Agricultural Association (the "Association") 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).)

QUESTIONS

1. Do the denim shirts and the passes, listed below, from the Association constitute gifts or income to officials of the Association?
2. Do tickets provided by entities that contract with the Association to host music venues on the Association's grounds constitute gifts to your officials?

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.)

CONCLUSIONS

1. As discussed below, only those passes or items given to officials for their individual attendance to the fair or to Association sponsored events would constitute income or reimbursement from the Association. The passes from the Association given to your officials for distribution to their guests would be gifts. The gifts are not subject to disclosure under the conflict of interest code for the Association, nor are they subject to the \$340 gift limit. They would, however, be an economic interest under the Act's conflict-of-interest provisions.

2. The tickets for events sponsored by an entity that uses the Association's grounds would constitute gifts from that entity unless the tickets are provided to the Association as part of a contract for use of the Association's grounds, or given to the Association for distribution to persons as determined by the Association. (See discussion below.)

FACTS

The Association hosts the Calaveras County Fair. The fair is a one-pay gate, with all acts, shows and carnival rides included in the \$15 price of admission.³ The list of passes and other items provided to your officials includes:

Directors receive:

- ◆ 2 official parking passes - allows car, driver and any passengers admission to the facility
- ◆ 20 single day courtesy admissions - fair market value \$15 each
- ◆ Identification badge - good for 4 days admission to the facility
- ◆ 2 denim shirts - fair market value \$24 each

Manager/CEO receives:

- ◆ 2 official parking passes - allows car, driver and any passengers admission to the facility
- ◆ 16 single day courtesy admissions - fair market value \$15 each
- ◆ Identification badge - good for 4 days admission to the facility
- ◆ 2 denim shirts - fair market value \$24 each

Other full-time employees (business assistant, exhibit representative, maintenance) receive:

³ In your letter you indicated that the chief executive officer and the directors also receive six "box seat" tickets to the Saturday night show. Since you indicated that the fair is a "one-pay" gate, it does not appear that there is an additional cost of admission to the Saturday night show. If this is erroneous, then the analysis in this letter applies to the six box-seat tickets as well.

- ◆ 2 official parking passes - allows car, driver and any passengers admission to the facility
- ◆ 12 single day courtesy admissions - fair market value \$15 each
- ◆ Identification badge - good for 4 days admission to the facility
- ◆ 2 denim shirts - fair market value \$24 each

The Association hosts four social functions. The events are free to invited guests and are events for sponsors or volunteers connected with fair activities. Members of the board and staff attend the events. The Association absorbs the cost of each event, but the value to attend is:

- ◆ Kick off dinner - \$15 per person
- ◆ VIP sponsors reception - \$10 per person
- ◆ Sponsors thank you BBQ - \$10 per person
- ◆ Volunteer appreciation dinner - \$7.50 per person

Additionally, your officials receive two tickets to events held on the Association's grounds sponsored by various entities. These include:

- ◆ Calaveras Celtic Faire - tickets valued at \$15 each
- ◆ Mountain Aire Festival - tickets valued at \$50 each
- ◆ Sierra Nevada World Music Festival - tickets valued at \$45 each

ANALYSIS

The members of the board and certain members of the staff are designated employees in the conflict of interest code (the "code") for the Association. With regard to disclosure of income, which includes gifts, loans and travel payments, the code requires that the members and staff disclose all income from any person who was awarded or who bid upon an Association contract, or who supplied under contract, materials, goods, supplies, or services.

With regard to gifts, your officials are required to disclose gifts valued at \$50 or more received from any source of income described in the Association's code, unless a statutory exception applies.⁴ Additionally, your officials are prohibited from receiving gifts with a total value of 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.⁵ (Section 89503.)

⁴ 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.

⁵ 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.)

Since income from the Association is not the type of income required to be disclosed by your officials under the code, gifts from the Association are not required to be reported on their statements of economic interests, nor are they subject to the gift limit. However, should one of the officials receive a gift or gifts valued at \$340 or more from the Association, the official would have an economic interest in the Association under the Act's conflict-of-interest provisions.⁶ (Section 87103(e).)

In your letter you indicated that it has always been the position of the Association that the tickets and shirts are not gifts, but are part of a compensation package that is necessary for directors and staff to do their jobs. In a telephone conversation, I asked if this was set out in writing and on March 10, 2003, you faxed me a copy of this policy. However, in reviewing the policy, it does not appear to be a compensation policy. It is, by the Association's own description, a "Courtesy/Credential Pass Policy." It not only includes the distribution of passes to the board and members of the staff, but it sets out the distribution policy for those who are not employed by, or are members of, the Association. For example, it sets out the pass policy to exhibitors, Miss Calaveras and her court, food concessionaires, frog jockeys, members of the press, members of the California Legislature, the board of supervisors, and city officials, among a list of others.

The Commission staff in its *Lamoree* Advice Letters, Nos. A-86-034 and A-86-125, held that when members of a fair board, who essentially function as ambassadors of the fair, receive free admission to attend the fair, the tickets amount to salary or reimbursements from the fair. As such, they are providing equal or greater consideration for their services when they receive a pass for their own attendance.⁷ 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 officials of the Association that are distributed to their guests would constitute gifts to the officials.⁸ (*Lamoree, supra.*) Accordingly, those passes given to the officials of the Association that are distributed to their guests would be gifts to the officials. As mentioned above, if the amount of the gifts from the Association totals \$340 or more, your officials receiving the gifts from the Association would have an economic interest in the Association.

If the denim shirts are given to your officials to be worn at fair events to identify them to the public as ambassadors who may be in a position to provide help, assistance or

⁶ We have previously advised that if a decision affects a public agency, in many cases we presume that the effect of a decision flows to residents in the jurisdiction and a "public generally" exception would permit the official to participate in the decision. (*Soldani* Advice Letter, No. A-94-042; *Sigurdson* Advice Letter, No. I-93-452.) It is suggested that if and when an official receives a gift(s) valued at \$340 or more from the Association and has a decision pending that would affect the Association, the official write in for further assistance.

⁷ "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).)

⁸ 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).)

information during fair events, the shirts are likened to uniforms and would not constitute gifts.

Tickets to Events not Sponsored by the Association

In your letter you indicated that your officials also receive tickets to events not sponsored by the Association. Each official receives two tickets valued at \$15 each to the Celtic Faire; two tickets valued at \$50 each to the Mountain Aire Festival; and two tickets valued at \$45 each to the Sierra Nevada World Music Festival. If these entities are of the type to contract with the Association as specified under the code, these tickets are gifts from each respective venue, unless an exception applies.

Under certain circumstances, a payment of tickets may be considered a gift to an official's agency, rather than to the official who receives the payment. The Commission has promulgated a regulation that determines when a gift used by an official will be considered a gift to the official's agency, as opposed to a gift to the official. (Regulation 18944.1.)

Regulation 18944.1 provides, in pertinent part:

“Passes or tickets which provide admission or access to facilities, goods or services, or other tangible or intangible benefits (including passes to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places or events, but not including travel or lodging), which are provided to an official are not gifts to the official whenever (a), (b), (c), (d), or (e) applies:

¶...¶

“(c) The tickets or passes are provided to the agency as part of the contract for the use of the facility and the distribution and use of the passes or tickets are regulated by an officially adopted policy of the agency.”

Regulation 18944.1(c) codifies the Commission's advice to John W. Witt, City Attorney for San Diego. (*Witt* Advice Letter, No. A-79-211.) It was the Commission's position that under the circumstances in San Diego, free admission to the city box was a perk of office and, therefore, constituted part of the compensation the officials received from the city. The city had retained possession and control of certain seats in the stadium, which were utilized by city officials pursuant to an officially adopted policy of the city. As such, the use of the privilege was neither reportable as a gift nor the basis for disqualification. Accordingly, under regulation 18944.1(c), the benefit city officials received from free admission to the city box was properly characterized as compensation from the city rather than a gift. (See also *Bernson* Advice Letter, No. A-82-211; *Delventhal* Advice Letter, No. A-83-123.)

Even if the tickets are not part of the contract for use of the Association's facilities, the tickets may be gifts to the agency as opposed to gifts to the public officials who ultimately receive them. If each respective venue gave tickets to the Association, without earmarking the tickets for use by specific officials, the Association could distribute the tickets to members of the board and staff provided the Association memorializes the receipt of the tickets in the manner described by regulation 18944.2, enclosed.

Accordingly, if the tickets to each official from a specific venue are part of the contract for use of the Association grounds, or given to the Association in the manner described by regulation 18944.2, the ticket to the official is considered a gift to the agency, not to the official who ultimately receives the use of the ticket. In your letter, you indicated that each official receives two tickets. The second ticket given to the official for his or her guest would be a gift from the Association as discussed above. (Regulation 18941(a).)

However, if the contract for use of the Association's grounds does not include a provision for tickets for the Association's use, or the tickets are not given to the Association in the manner described by Regulation 18944.2, the tickets to the various musical venues will be gifts to the officials from each venue, subject to the Act's disclosure and gift limits.

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

Sincerely,

Luisa Menchaca
General Counsel



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

Enclosures

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