



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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October 17, 2024

Stefan R. Spich  
General Counsel  
IBank  
1325 J Street, Suite 1300  
Sacramento, CA 95814

Re: Your Request for Advice  
**Our File No. A-24-094**

Dear Mr. Spich:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).<sup>1</sup> Please note that the Commission will not advise with respect to past conduct. (Regulation 18329(b)(6)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained herein apply only to prospective action

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

If IBank intends to disclose the sponsorship by outside sources of its 30<sup>th</sup> Anniversary event by completing Form 801 designating the event as a work/marketing event, would this negate the need for individual Form 700 disclosure of items such as food and drinks? Is the analysis of personal financial benefit affected by the fact that without payment for outside event sponsors IBank will be paying the employees’ costs for the event?

### CONCLUSION

Regulation 18944 does not apply to payments made to IBank from outside sources for meals and drinks provided to employees at a 30th Anniversary event because the provision of dinner and drinks is not official agency business. Therefore, reporting these items on a Form 801 does not alleviate the reporting requirements for individual officials if the value of the dinner and drinks, and any other gift from the same source aggregates to \$50 or more in a calendar year. As discussed

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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 18104 through 18998 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.

below, if the employee is required to report the source of the gift on an SEI, the agency, in its capacity as an intermediary under the Act, must disclose the name and other required information regarding the outside source to the employee.

### **FACTS AS PRESENTED BY REQUESTER**

IBank is a State financing agency located within the Governor's Office of Business and Economic Development (GO-Biz). IBank was established in 1994. IBank is a unique state entity in that it receives no General Funds and needs to generate transactional fees and revenues to support operational costs. To increase its market visibility and honor its 30-year milestone, IBank held a business development event in early September.

The event included approximately 150 invitees. Attendees consisted of a mix of IBank's employees, other State officials who work with IBank, IBank's borrowers (largely CA municipalities, districts, and nonprofits), and market transaction professionals (e.g., bond counsel, underwriters, trustees, financial advisors). The event sought to promote multiple purposes: business development of IBank, celebration of IBank's continued existence, building strong relationships, and educating attendees who do not regularly interact with IBank regarding the agency's substantial new programs and capacity. The event included a mix of formal speeches, eating, and informal networking.

IBank rented a venue, the Academy Museum of Motion Pictures, from a prior non-profit customer in Los Angeles, and the event was budgeted to cost approximately \$40,000. The costs would be for facility rental, food, and services. In a follow-up telephone call, you confirmed that Wolfgang Puck's restaurant provided the food, which included wine flights and dessert. The value of the food and beverages provided would be in excess of \$50 per person. IBank acknowledges that using state funds for the event raises the question of whether doing so would be a prohibited gift of public funds.<sup>2</sup>

IBank received sponsorships for nearly all of these costs from invitee institutions. These institutions largely fall into five categories:

- Service providers who are engaged directly by IBank ("service contractors"),
- Service providers IBank is mandated to use by law ("statutory service contractors"),
- Service providers who are not engaged or paid by the IBank, but who work jointly on some transactions with IBank ("deal partners"),
- Entities that issued a bond through IBank in the past ("prior conduit bond borrowers"), and

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<sup>2</sup> You contend that IBank has considered this and has taken the position that the "public purpose" exception allows IBank to use public funds for an event of this nature. However, we express no opinion on the permissibility of the use of the funds. The Commission does and not give advice on legal issues outside the Act and Section 1090. Thus, we take no position on whether this is a permissible use of public funds under the California Constitution. (Gift of Public Funds: Cal. Const. Art. XVI § 6).

- Nonprofit organizations who may support IBank’s work in business development and infrastructure financing as a general matter, often along policy-focused lines (“policy partners”).

IBank offered a tiered sponsorship model at \$5,000 or \$2,500 representing various levels of acknowledgement before and during the event. In a follow-up email, you confirmed that 11 entities provided contributions for the event totaling \$37,500 in sponsorships. Fiduciary Trust International; California Southern FDC; and SBDC of Orange County each provided \$5,000, while California Coastal FDC; California Capital FDC; PCR FDC; Valley FDC; Hawkings, Delafield & Wood; Orrick, Herrington & Sutcliffe; and Nixon Peabody each contributed \$2,500

IBank used third-party service provider (previously used by GO-Biz) to act as an intermediary to receive funds from sponsors and pay for the costs of the event. The third-party service provider applied the funds to the event costs, with the State paying any outstanding remaining amounts.<sup>3</sup>

Other than the identified managers who worked on the sponsorship process and who will reimburse the costs of their food/drink, IBank staff was not involved in the sponsorship nor aware of how the event has been paid for. In a follow-up email, you state that, while IBank is still doing the final math (deposits, security costs), it expects \$41,055 in total event expenses and only received \$37,500 in sponsorships. IBank will pay the remaining cost, and will not seek to collect it from employees. You also state that IBank has elected to avoid soliciting sponsorship from deal partners altogether, and from any service contractors for which there may be a contract renewal within 12 months of the event.

## ANALYSIS

### *Gifts and Form 801 Disclosure*

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 . . . .” (Section 82028.) The Act prohibits certain public officials from accepting gifts from any single source in a calendar year with a total value of more than \$590. (Section 89503; Regulation 18940.2.) Under the Act, an employee of a government agency who is designated in the agency’s conflict of interest code may not accept gifts from any single source totaling more than \$590 in a calendar year if the employee is required to report receiving income or gifts from that source on their Statement of Economic Interests. (Section 89503(c).) In addition, officials who are subject to these gift limits must report gifts totaling \$50 or more in a calendar year from a single source on their Statements of Economic Interests. (Sections 87207 and 87302.)

Regulation 18944 sets forth circumstances under which a payment made to a government agency is not treated as a gift to the agency official who receives a personal benefit in its use when the payment is controlled by the agency and used for “official agency business.” (See *Hahn Advice*

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<sup>3</sup> You assert that the use of a third-party service provider “works to insulate the State from receipt or use of private sponsor funds.” We express no opinion as to whether a third-party service provided insulates the State from any claim of an impermissible use of public funds as we express no opinion on laws or restrictions outside of the Act.

Letter, No. A-10-064.) The regulation requires state and local government agencies to disclose these payments on Form 801. At issue here is whether the meals proved to IBank officials would be considered “official agency business.”

We have consistently interpreted the term “official agency business,” as used in the regulation, to apply to only those expenses that are directly related to the performance of the agency’s public function or a specific pursuit for which the agency was created to accomplish. (See *Wiley Advice Letter*, No. I-08-196.) Regulation 18944 exempts from the Act’s definition of gifts to a public official only those types of items for which the agency might itself legally expend funds. (*Wile, supra*.<sup>4</sup>) We also note that the term “official agency business” does not have the same broader meaning as “legislative or governmental purpose.” (*Deitsch Advice Letter*, No. I-14-195; see also Regulation 18944.1’s use of the broader phrase “legitimate public purpose.”) Of note, in the narrower context of payments received from outside parties for government travel, “official agency business” is more specifically defined to include such narrow circumstances as “performing a regulatory inspection or auditing function that the government employer is mandated to perform,” or attending something “solely for the purposes of providing training or educational information directly related to the governmental employer’s functions or duties under the laws that it administers for individuals who are affected by those laws, and the payment is made by an organization to provide such training for its members.” (See Regulation 18950.1(c), emphasis added.)

In the *Girard Advice Letter*, we stated that a payment is not used for “official agency business” if the payment is used by the official for his or her own personal use and benefit, and advised that the provision of free food and beverages to city officials in a city-owned skybox at a local sports stadium did not constitute “official agency business.” (*Girard Advice Letter*, No. A-98-170a.) Here, you indicate that Wolfgang Puck’s restaurant provided the food, which included wine flights and dessert, with a value in excess of \$50 per person, which was served to attendees at IBank’s 30th Anniversary event in Los Angeles.

Based on the above, we advise that the payments made to IBank for dinner and drinks did not constitute payments for “official agency business” and, therefore, do not qualify for the limited exception for gifts to the agency. Rather, the payments constituted gifts to the IBank officials and employees who attended the 30th Anniversary event. As such, IBank is not required to report the payments on a Form 801. Moreover, even if IBank voluntarily reports the payments on a Form 801, individual IBank officials are not alleviated from reporting the gifts on their Form 700 if the value of the dinner and drinks, along with any other gifts from the source, aggregate to \$50 or more in the reporting period.

As stated above, officials who are subject to the Act’s gift limits must report gifts totaling \$50 or more in a calendar year *from a single source* on their Statements of Economic Interests. (Sections 87207 and 87302, emphasis added.)<sup>5</sup> We note that you have provided no valuation of the

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<sup>4</sup> We note that this letter references former Regulation 18944.2, which was renumbered to existing Regulation 18944 in 2012.

<sup>5</sup> Even if the value of the food and beverages here does not reach the reporting threshold from some or all individual contributors, note that any gifts that aggregate to \$50 or more from the same source received during the calendar year must be disclosed on the official’s statements of economic interests.

costs of the dinner and drinks. To assist you in the valuation of the gift to any individual IBank official, we can generally advise that the gift from any specific sponsor is the value of the dinner and drinks based on the percentage of the amount provided by the sponsor and the total sponsored amount. Thus, for a \$5,000 sponsor,  $\$5,000/\$37,500$  or 13.33 percent of the dinner and drinks would be attributed to the sponsor as a gift to each individual IBank official. We further note that while it does not appear that any sponsor provided a gift of \$50 or more based on the sponsorship levels, total cost of event, and number of attendees, officials must report gifts if the aggregate value of gifts from the source is \$50 or more in the reporting period.<sup>6</sup> If an IBank official has received other gifts from the official and needs further assistance to determine whether the aggregated value of the gifts is \$50 or more and must be reported, the official should seek further advice identifying all gifts and as well as the valuation of the dinner and drinks.<sup>7</sup>

### *Gift Intermediary*

Because payments for the food and drinks provided at this event have been paid with funds solicited from outside donors, we must also determine whether the true source of such payments would be IBank, which arranged the event, or the sponsors who actually provided funds. Regulation 18945, which provides the rule for determining the source of gifts, states in pertinent part:

“(a) The person who makes the gift to the official(s) is the source of the gift unless that person is acting as an intermediary. The person is acting as an intermediary for the source of the gift when the gift to the official was provided under any of the following conditions:

“(1) the person receives a payment from a source and the payment is made to the official after the source identifies the official as the intended recipient of the gift;

“(2) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or

“(3) the person receives a payment from a source after the payment was solicited by the official or the official’s agent for the purpose of making a gift to the official.

“(b) Under any of the conditions identified in subdivision (a)(1)-(3), the source of the payment is the source of the gift.

“(c) If a public official’s pro-rata share of the cost of the benefit provided at an event constitutes a gift to the official, the person hosting the event, unless the admission to the event was

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<sup>6</sup> In addition, a public official who receives gift(s) of \$590 or more may have a financial conflict of interest under the Act. (Sections 87100 et seq.) The official must be disqualified from making or participating in making a governmental decision affecting that source if the payment was received or promised to the official within 12 months preceding the decision. If any official has received other gifts from any of the sources who acted as event sponsors, you may wish to seek further assistance.

<sup>7</sup> Although the food and drinks received by officials may not be a reportable gift under that Act, we caution that the receipt of anything of value may create a financial interest for purposes of Section 1090. You may wish to contact us for further advice once a specific contract has been identified.

provided by someone other than the host, shall be deemed the source of the gift so long as the event is widely attended by persons other than governmental officials.

Given your account of the facts, Regulation 18945(a) (2) would appear to apply. IBank hosted the event and determined who would be invited to attend. IBank had made it clear that funds solicited from sponsors would be used for the event, including providing food and beverages. Since the sponsors will know that the beneficiaries of their payments will be public officials, it is the sponsors who would be the source of any gifts. Your account of the facts clearly anticipates that each sponsor knows or has reason to know that the sole or primary purpose of the payment is to make gifts to officials. Additionally, IBank solicited the payments on behalf of the recipient IBank officials in order to provide food and beverages. Thus, IBank acted as an agent of the recipient IBank officials soliciting the payment for the purpose of making gifts to the officials, and is also an intermediary under Regulation 18945(a)(3). Under Regulation 18945, IBank was acting as the intermediary of these sponsors. Moreover, pursuant to Section 87313 and Regulation 18945, as the intermediary of the gifts, IBank must inform recipient officials of the donors' names, street addresses, and business activities.

If you have other questions on this matter, please contact me by email at [znorton@fppc.ca.gov](mailto:znorton@fppc.ca.gov).

Sincerely,

Dave Bainbridge  
General Counsel

**Zachary W. Norton**

By: Zachary W. Norton  
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