



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 17, 2023

Arthur Liou
Leonard Carder
1999 Harrison St., Suite 2700
Oakland, CA 94612

Re: Your Request for Informal Assistance
Our File No. I-23-039

Dear Mr. Liou:

This letter is in response to your request for advice regarding gift provisions of the Political Reform Act (the Act).¹ Please note that we are only providing advice under the conflict-of-interest provisions of the Act and not under other general conflict of interest prohibitions. Because your request involves general guidance not limited to a specific decision, we are treating it as one for informal assistance pursuant to Regulation 18329(b)(6)(F). Informal assistance does not provide the requester with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).) Nothing in this letter should be construed as an evaluation of any conduct which may already have taken place, and any conclusions drawn apply only to prospective actions described in your request. (See Regulation 18329(c)(4)(A).)

QUESTION

May the California Working Families Party (WFP) pay for leadership training for newly elected state and local legislators without violating the Act?

CONCLUSION

Yes, if the training is provided for the purpose of educating the participants in matters related to the performance of their official duties, then the cost of the training, other than travel payments for transportation, accommodations, meals, or the reimbursement of other expenses, would not be regarded as “gifts” to the participants under the Act.

FACTS AS PRESENTED BY REQUESTER

WFP would like to provide free leadership coaching and training to a small cohort of newly elected city and state legislators. The coaching and training would consist of meetings between the leadership coach and the elected officials, occurring approximately biweekly for a period of 4-5

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 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.

months conducted in a small group setting. The leadership coach would provide training to the individuals on adaptive leadership, goal setting, time and project management, and people management, based on an established training curriculum developed by the coach. The objective would be to increase the overall effectiveness of the officials as leaders, so they can better perform their official duties as legislators. The approximate cost of the trainings is \$2,000-\$3,000 per person. Only certain selected officials would be participating, and the trainings would not be open to the general public.

The purpose of the trainings would be primarily to convey information to the elected officials and assist them in the performance of their official duties. No degrees or other credentials would be conferred on the participants.

ANALYSIS

A. Gifts Under the Act.

A gift is defined under Section 82028(a) as:

... 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 or discount is made in the regular course of business to members of the public without regard to official status.

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by public officials in three ways. First, the Act places limitations on the acceptance of gifts by certain public officials. Under Section 89503(c):

A member of a state board or commission or designated employee of a state or local government agency shall not accept gifts from any single source in any calendar year with a total value of more than [\$590] if the member or employee would be required to report the receipt of income or gifts from that source on the member's statement of economic interests.²

Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials' statements of economic interests. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency's conflict-of-interest code as specified in the code (Section 87302(b)).

² The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. (Section 89503(f); Regulation 18940.2.)

Finally, the Act prohibits any public official from making, participating in making, or using official position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$590 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 and 87103(e).)

Based in the information provided, the elected public officials who will be participating in the program would be subject to the Act's gift provisions unless an exception applies.

B. The "Informational Material" Exception.

Expressly excluded from the Act's definition of "gift" is "informational material," which broadly includes any item "that serves primarily to convey information and that is provided to the official for the purpose of assisting the official in the performance of official duties or the duties of the elective office the official seeks." (Regulation 18942.1; see Section 82028(b)(1).) "Informational material" may include "[b]ooks, 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." (Regulation 18942.1(a).) Thus, the value of the program itself and the course materials provided in connection with the educational program would not be regarded as "gifts" to participants if provided for the purpose of educating the participants in matters related to the performance of their official duties.

Here, the purpose of the trainings would be primarily to convey information to the elected officials and assist them in the performance of their official duties. The intent of the trainings would be to increase the general effectiveness of the officials as leaders and legislators on subjects such as adaptive leadership, goal setting, time and project management, and people management. The trainings would not provide the officials with degrees or credentials for participating, and thus would not confer a benefit that may enhance future employment opportunities. They would be conducted like a seminar in a small group setting biweekly for 4-5 months. Consequently, the "informational material exception" applies and WFP's training of elected officials as described in your request is not subject to the Act's limit on receipt of gifts and is not a disclosable gift.

However, we note that you have indicated that the training will cost approximately \$2,000 to \$3,000 per person. Because you have not provided a breakdown of the costs, we must caution that our determination that the cost of the training qualifies as informational material and is not a gift under the Act is strictly limited to the direct and actual cost to provide the training and any training materials received. Under Section 82028, "No payment for travel or reimbursement for any expenses maybe deemed informational material." Payments for travel including accommodations, transportation, meals, and the reimbursement of other expenses do not qualify as informational materials and constitute gifts to the officials that are subject to reporting and the Act's \$590 gift limit.

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

Sincerely,

Dave Bainbridge
General Counsel

/s/ John M. Feser Jr.

By: John M. Feser Jr.
Senior Counsel, Legal Division

JMF:aja