

MEMORANDUM OF LAW

DATE: September 3, 1986

TO: Councilmember Gloria D. McColl
FROM: City Attorney
SUBJECT: Use of Complimentary Lodging

You inquired generally about the reportability of complimentary lodging in a) a mobile home on the Rogue River and b) a cottage in Mexico. We have delayed answering this inquiry with the consent of your Executive Assistant Marla Marshall.

The Political Reform Act has both reporting and disqualification provisions. In general the receipt of complimentary lodging is a "gift" as defined in California Government Code section 82028 and each gift worth more than fifty dollars (\$50) must be reported on your Statement of Economic Interest (S.E.I.). California Government Code section 87207.

Of course, short stays in friend's mobile home or cottage is difficult to value. Placing a value on the lodging is left to the filer's good faith estimate of the fair market value of the gift. Section 82025.5; In re Hopkins, 3 FPPC 107, 112 (1977). This opinion focuses on whether such an item could be purchased in the market place. Thus in determining the fair market value you should see whether similar lodging is available for rent and use such comparables in arriving at the value.

We are quick to caution that, as the 1986 FPPC Information Manual points out, occasional lodging in an individual's home or gifts that have been reciprocal need not be reported.

SCHEDULE F

Gifts

You must disclose gifts received during the reporting period aggregating \$50 or more from any source.

You have received a gift if you receive an item of value and do not provide anything of equal or greater value in return for that item. It is the acceptance of the gift, and not the ultimate use to which it is put, that imposes a reporting obligation on you. Thus, you must report a gift even if you never make use of it or if you give it away to other persons. If the exact amount of the gift is not known, you must make a good faith estimate of the item's fair market value. Listing the

value of the gift as "over \$50" is not adequate disclosure. Gifts are reportable without regard to where the donor is located.

EXCEPTIONS: You need not disclose gifts on a candidate's or assuming office Statement. In addition, you are not required to disclose the following:

- Food, drink or occasional lodging provided in an individual's home.
- Gifts approximately equal in value exchanged between you and an individual other than a lobbyist, on holidays, birthdays, or similar occasions.

Thus you should report the fair market value of your lodging unless the location was the personal home of the donor or if you have reciprocated with the donor.

As to the issue of disqualification, Section 87103 requires a disqualification only where it is reasonably foreseeable that the governmental decision will have a material financial effect on you, your immediate family or the donor of the gift or gifts aggregating two hundred fifty dollars (\$250) or more in value received or promised to the official within twelve (12) months prior to a governmental decision. Hence you would only have to disqualify yourself if the value of this lodging has a fair market value of two hundred fifty dollars (\$250), was used or promised within twelve (12) months of the Council action and would have a material financial effect on the donor.

We trust this answers your questions of reportability on your S.E.I. and disqualification criteria. We purposefully have not

discussed Council Policy 000-4 since your statement of facts does not appear to raise its supplemental provisions.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

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