

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

March 8, 1984

Honorable Dianne Feinstein
Mayor of the City and
County of San Francisco
City Hall
San Francisco, CA 94102

Re: Your Letter of March 6, 1984,
Regarding Our Advice Letter
No. A-84-014

Dear Mayor Feinstein:

I am in receipt of your letter regarding our discussions of March 6, 1984. You are correct in your "recollections" of our discussions. In order for the record to be entirely clear and so that no future misunderstandings arise, I shall reiterate my advice more fully below.

1. As to site selection and acquisition: You may personally participate in this process so long as the range of options under consideration only involve a "free" site, i.e., "at little or no cost to the City." If, at some point in the future, the range of options is altered to include consideration of sites which will have a significant cost factor, then we should reassess your further participation at that time.

2. As to your staff's participation: The disqualification on your part from making, participating in making, or using your official position to influence any governmental decisions which will have a reasonably foreseeable material financial effect upon the Giants (prior to 3/21/84) or the Forty-Niners (prior to 8/1/84) is, indeed, personal as to you. Other city officials, including your staff, may fully participate in the development of the stadium plans provided that they do so independently of your direction and control, so that you are neither participating nor using your official position to influence their governmental decisions.

3. In addition to the above two areas, we also discussed the subject of negotiations scheduled for next week (3/14-3/15)

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with the DeBartolo corporation on the subject of luxury box leases. This is a process as to which you should disqualify yourself as it will have the requisite effect upon the Forty-Niners' owners.

As I understand it, you will forward a written request for further advice as to other decisions in the stadium process. I look forward to its receipt and the opportunity to serve you in responding to your inquiries.

Sincerely,

Robert E. Leidigh
Counsel
Legal Division

REL:plh

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March 5, 1984

George Agnost
City Attorney
Burk E. ("Buck") Delventhal
Deputy City Attorney
City and County of San Francisco
Room 206, City Hall
San Francisco, CA 94102

Re: Your Request for Advice, Our Advice
No. A-84-014

Dear Mr. Agnost:

You have written requesting advice on behalf of Dianne Feinstein, Mayor of the City and County of San Francisco (the "City"). Recent newspaper articles have focused attention on her receipt of gift tickets from the San Francisco Giants Baseball Team (the "Giants") and the San Francisco Forty-Niners Football Team (the "Forty-Niners"). As a result of this media attention, Mayor Feinstein (the "Mayor") has recently filed amendments to several of her Form 721 Statements of Economic Interests to disclose receipt of substantial amounts of tickets from the Forty-Niners in previous years. In addition, she has also received tickets from the teams in 1983.

QUESTION

You have asked for our advice as to whether the Mayor has any conflicts of interest requiring disqualification under the facts which you have presented.

CONCLUSION

The Mayor has a conflict of interest arising from her receipt of gift tickets from the Giants and the Forty-Niners which will require her to disqualify herself from certain governmental decisions until such time as 12 months has passed from her most recent receipt of tickets from each team. In the case of the Giants, that date is now less than one month hence, provided she does not receive and has not received additional gifts from the Giants cumulatively equaling or

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exceeding \$250. In the case of the Forty-Niners, that time period will expire on August 1, 1984. However, the Mayor may participate in certain governmental decisions as to which her participation is legally required. In addition, she may undertake any nongovernmental actions which she desires. The details of and basis for this advice follow.

FACTS

From your several pieces of correspondence and our several telephone conversations, the material facts^{1/} may be stated as follows.

The Gift Tickets

The City owns Candlestick Park Stadium^{2/} ("Candlestick") and leases it for use by both the Giants and the Forty-Niners. The lease agreements between the City and the Giants and the City and the Forty-Niners each provide for certain restrictions on the number of free admissions which are handed out by the respective teams. This is because revenues paid by the lessees to the City are based upon paid admissions. The Forty-Niners' lease specifically provides that the Forty-Niners agree to furnish to the Recreation and Parks Commission 24 tickets to box seats located in the mezzanine area of Candlestick Park Stadium. In addition to these tickets, for which the City specifically contracts, the Forty-Niners' lease agreement further provides:

During the year 1970 and each and every year throughout the term of this agreement the Lessee shall have the sole and exclusive right to determine the recipients of any and all complimentary tickets to the Lessee's football exhibitions.

The Giants' lease contains no similar provisions for giving tickets to the City. However, both the Giants and the Forty-Niners have routinely given free tickets to San Francisco officials, including

^{1/} The factual material presented is voluminous; however, much of it is not material to our consideration of the question at hand and, therefore, is not presented or analyzed in this letter.

^{2/} The stadium is owned by the City, under the jurisdiction of its Recreation and Parks Department and leased to the two teams, and others, for events.

the Members of the Board of Supervisors^{3/} and the Mayor. In the case of the Giants' tickets, they include Stadium Club privileges for the users of the tickets. In the case of the Forty-Niners' tickets, they are in addition to the 24 provided pursuant to the lease agreement and they are accompanied by parking passes.

Each year, the Giants and the Forty-Niners forward to the Mayor eight season tickets for a mezzanine box at Candlestick for each of their home games.^{4/} The only transmittal letter for tickets to the Mayor which can be found is that for the year 1981 (see Exhibit "A"). It is addressed to Dianne Feinstein, Mayor of the City and County of San Francisco. While the letter makes a reference to "your office" it also makes several references to "your" seats and "your" party and the "eight seat Deluxe Mezzanine Season Box" is for "your use during the entire season." The Forty-Niners' transmittal letters are all unavailable. Nor is there any written memorialization from the Mayor to either team or any resolution or memorialization as to their receipt by her or her office for any year; these either never existed or have been lost.

In 1981, the Mayor gave all eight Forty-Niner season tickets to Willie Brown, State Assemblyman from San Francisco and Speaker of the Assembly.^{5/} In 1982, she again gave the Speaker four of eight seats to all the season games of the Forty-Niners. The names of the other attendees at 1982 games, utilizing the tickets to the "Mayor's Box,"^{6/} are unavailable.

In addition to the tickets, the Mayor's original Statement of Economic Interests for 1982 reflects that in August 1982, she received a "49'er Watch" worth \$80 from Mr. Edward DeBartolo of Canfield, Ohio. We assume that this was in fact Mr. DeBartolo, Jr.,

^{3/} See discussion in my letter of June 1, 1973, to Mr. Delventhal, No. A-83-123.

^{4/} The Forty-Niner tickets include pre-season exhibition games.

^{5/} In his Statement of Economic Interests, Speaker Brown reports his receipt of these tickets from Dianne Feinstein. Although she gave away all the 1981 season tickets, she still was able to attend several of the games, plus the playoff games during the Forty-Niners' Super Bowl season, as a guest of Forty-Niners owner Edward DeBartolo, Jr.

^{6/} In her statement, the Mayor relates that in 1981 she "gave Assemblyman Willie Brown the Mayor's box seat tickets for the Forty-Niners games."

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the owner of the Forty-Niners rather than his father, the owner of the Pittsburgh Maulers, of the United States Football League. A gift from the owner of the Forty-Niners must be cumulated with gifts received from the team.

Most recently, the Giants' 1983 season tickets were received on or about March 21, 1983. There were 496 tickets, at \$8 each, for a total face value of \$3,968. The 1983 Forty-Niners' tickets were received on or about August 1, 1983. There were 80 tickets, at \$25 each, for a total face value of \$2,000. On or about November 10, 1983, the Mayor paid the Forty-Niners \$125 and on or about December 21, 1983, she paid the Forty-Niners \$200. The Mayor has made no payments to the Giants.

For 1983, the Mayor directed her staff to improve security measures for the safe-keeping of the tickets -- directing that they be kept in a locked file cabinet. In 1983, the Mayor personally did not utilize any of the Giants tickets or other privileges. Numerous others did make use of them, mostly her staff, but since the list of users has been lost we are not sure who were all of the users. At least some of them were not city personnel.^{1/} However, for the Forty-Niner games, she and her campaign workers and other political associates have made extensive use of the tickets.

In addition to the eight season tickets, the Forty-Niners forwarded five parking passes for each home game. The Mayor has her own parking pass issued by the Police Department and, therefore, did not use any of the passes provided by the Forty-Niners; however, others who used the gift tickets to attend those games also made use of the parking passes. The following usage was made of the 1983 Forty-Niners tickets; for precise details see attached Exhibit "B".

- 1) The Mayor and the Mayor's husband, her daughter and her daughter's friend - 9 tickets at \$25 = \$225
- 2) Other friends of the Mayor - 11 tickets at \$25 = \$275
- 3) The Mayor's campaign workers - 12 tickets at \$25 = \$300
- 4) Oakland Mayor Lionel Wilson and guests - 4 at \$25 = \$100
- 5) Other public officials of San Francisco - 2 at \$25 = \$50

^{1/} See answer to Question No. 6 in statement of James Molinari, Exhibit "B".

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- 6) Staff of the Mayor's office and their guests - 6 tickets at \$25 = \$150
- 7) Hastings Law School Donation - 4 at \$25 = \$100
- 8) Returned to the Forty-Niners - 8 at \$25 = \$200
- 9) Miscellaneous and (apparently) unused - 24 at \$25 = \$600

The Candlestick Park Issue

Candlestick was originally constructed to house the Giants and later modified for use by the Forty-Niners. From time to time, it has also been utilized for concerts and other events. Currently, there is an ongoing debate over possible construction of a new, domed stadium and its location.

The City and County of San Francisco is entering upon a course of inquiry into the condition of its aged and deteriorating stadium, Candlestick Park. Weighty municipal decisions committing the people of San Francisco to costly construction projects and to a long-term view of an important public facility, a municipal stadium, face San Francisco.

Your Advice Request Letter, January 20, 1984, page 1.

The Mayor desires to participate fully in this debate and to play a lead role in the various governmental processes which form an integral part of this decision. In response to our specific request, you have advised that the Mayor desires to participate in the activities set forth below:

Recommendations to the Board of Supervisors for a Charter amendment providing for the sale of Candlestick Park; recommendations to the Board of Supervisors for submission to the voters of a bond proposal to finance a new stadium.

Voter approval of the same.
Site selection and acquisition.
Lease with property owners.
Lease with sports franchises.
Lease of luxury boxes to master tenant.
Lease of advertising rights.
Stadium design.
Disposition of Candlestick site.

For each of these activities, the Mayor contemplates undertaking a variety of roles. For specifics, see Exhibit "C," attached.

ANALYSIS

Background

The Political Reform Act^{8/} requires disqualification of a public official, at any level, from making, participating in making, or using his or her official position to influence any government decision in which he or she has a financial interest, as defined. Section 87100. One situation in which a financial interest exists in a decision occurs whenever the reasonably foreseeable effects of the decision will be material and distinguishable from the effects upon the public generally, on:

(c) Any source of income, other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(c).

Before an official is required to disqualify himself or herself from a decision under the Act, all of the conditions in Sections 87100 and 87103 must be met. First, he or she must be an official, who is acting in his or her official capacity (making a "governmental" decision). Next, there must be a financial interest, such as a source of income,^{9/} within the meaning of Section 87103. Then it must be reasonably foreseeable that the financial effect of the decision upon the source of income will be material.^{10/} Lastly, if the effect will be material, the effect must also be

^{8/} Government Code Sections 81000-91014, adopted by initiative measure in June 1974. All statutory references are to the Government Code unless otherwise specified.

^{9/} There are other bases for an official having a financial interest in a decision; however, they are not relevant here.

^{10/} This is defined by Commission regulation 2 Cal. Adm. Code Section 18702 (copy attached) and will be discussed in greater depth, infra.

distinguishable from the effect of the decision on the public generally.^{11/}

Assuming that these criteria are satisfied, disqualification is then required. There is a lone exception to this rule. Where an official is otherwise required to disqualify himself or herself, he or she may participate where such participation is legally required for the action or decision to be made. Section 87101.

"Governmental" Decision

With these guiding principles in mind, we turn to the facts at hand. Mayor Feinstein is obviously a public official. Section 82048. In your description of actions which she desires to take, most are "governmental" actions which she would be undertaking in her official capacity (Exhibit "C"). However, certain significant actions are not. You have stated that:

Once the measures are before the voters for approval, the Mayor anticipates campaigning for their passage by giving speeches and interviews, attending or hosting fund-raisers, privately lobbying interested groups or individuals, and otherwise facilitating the presentation of the issue to the people.

Assuming that she is not using City facilities and staff to campaign for the ballot measure, she would not be making governmental decisions in campaigning for its passage or defeat.^{12/}

You have also said that she intends to lobby for state and federal funds. If the Board of Supervisors first decides that City resources (including the Mayor's time) should be utilized to lobby the State or the Federal governments for funds, the lobbying itself would not be a governmental decision; however, the decision to utilize City resources to do such lobbying is a governmental decision.^{13/}

^{11/} This concept is refined by Commission regulation 2 Cal. Adm. Code Section 18703 (copy attached).

^{12/} While the voters' decision on the ballot measures affects government, it is not a "governmental" decision made by a public official acting in his or her official capacity. It is an electoral decision made directly by the public. However, the decision on whether or not to place a measure before the voters is a governmental decision.

^{13/} See advice letter to Adriana Gianturco, No. A-81-90 (copy attached).

The remainder of the actions enumerated (in Exhibit "C") appear to be governmental in nature. Therefore, as to these, we must determine if disqualification is required.

A Gift is Income

Income, as defined in the Act (Section 82030(a)) includes a gift. Gift is defined as follows:

(a) "Gift" means, except as provided in subdivision (b), any payment 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....

(b) The term "gift" does not include:

* * *

(2) Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization without being claimed as a charitable contribution for tax purposes;

Section 82028.

Consequently, if the Mayor has received a gift or gifts equaling \$250 or more within the preceding 12 months from the Giants or from the Forty-Niners, then the donor(s) of those gifts are source(s) of income within the meaning of Section 87103(c). They could form the basis for the existence of a financial interest on her part in some or all of these governmental decisions.

The Tickets Are a Gift to The Mayor

The Mayor has received gifts of tickets well in excess of \$250 from both the Giants and the Forty-Niners^{14/} within the preceding 12-month period. However, it should be noted that in the case of the Giants' tickets, the 12-month period will expire on or about March 21, 1984, if no further gifts have been or are received or retained by the Mayor.

^{14/} In the case of the Forty-Niners' tickets, she and her friends and campaign workers and associates have actually used well in excess of \$250 of tickets.

We have carefully reviewed the facts submitted by you and the arguments which you have raised to the effect that these tickets should be considered as a gift to the "Office of the Mayor" rather than to the Mayor herself. Based upon a careful and comprehensive review of a long line of Commission Opinions, staff advice, a recent Bulletin article, and our review of the facts, we cannot agree.

The pattern and practice of the usage of the Forty-Niners' tickets, as well as the one Giants' transmittal letter available, make it clear that the tickets from both the Giants and the Forty-Niners are, indeed, gifts to the Mayor. They are placed at her disposal. They are not given directly to any other person. When she has wanted to exercise her control over their usage she has done so,^{15/} as demonstrated by her gift of tickets for the entire season to Speaker Brown.^{16/} Those tickets which she has elected not to use for herself or her friends were then made available to others; this was not limited to staff of the "Mayor's Office." The tickets were not treated as public property of the City, but were frequently given to non-City personnel.^{17/}

Whenever the Commission has addressed the question of the valuation of gift tickets or passes to sporting events, movie theaters or amusement parks, its advice has been that, even if not personally used by the recipient, the full value is attributable to the official who receives the gifts. In the Hopkins Opinion^{18/} the facts before the Commission were as follows:

^{15/} We asked Mr. Delventhal for further clarification as to how the Mayor took the entire 1981 season's tickets and one-half of the 1982 season's tickets to give to Speaker Brown. Mr. Delventhal has advised that he was able to come up with no further information which would "be helpful."

^{16/} When the Forty-Niners began their winning ways during their Super Bowl season, for which she had given her tickets away, she managed to attend the games anyway as Mr. DeBartolo, Jr.'s guest.

^{17/} Community activists, campaign aides, another prominent Bay Area politician (Mayor Wilson), the State Democratic Chairwoman (Ms. Pelosi), the Speaker of the Assembly, etc.

^{18/} Opinion requested by William P. Hopkins, No. 77-022, December 8, 1977; 3 FPCC Opinions 107 (copy attached).

Many types of complimentary tickets and free passes are sent customarily to members of the Anaheim City Council, heads of city departments and members of various city boards and commissions. Such tickets and passes include:

(1) Golden West Baseball Co. tickets for each "Angels" game for seats in a special box reserved for City officials and their guests at the City's stadium. There are 81 "Angels" baseball games played at the City's Anaheim Stadium during the baseball season. Six tickets to each game are available to each city councilmember, although not always used by them personally. In most cases they are given to other persons who are guests of the city councilmembers concerned and sometimes they are not used. These box seats are not available to the general public and have no printed price on the tickets. The highest priced ticket sold to the public is \$4.50.

3 FPPC Opinions at 107.

The facts in Hopkins are essentially identical to those at hand, except that here the tickets have a face value. In the case of the Giants, it is \$8; in the case of the Forty-Niners, it is \$25. In addition, here the Mayor received eight tickets instead of six. In Hopkins, the Commission held that the value of all of the tickets was attributable to the official receiving them, whether used by the official or by others.^{19/}

In 1978, we advised then Senator Song that when he received an invitation to go to Disneyland on a special "Legislator's Day" and received seven complimentary tickets in addition to his own, he must report all eight tickets as gifts, because the tickets were not specifically given to any of the people that he invited.^{20/}

In 1977, we advised Senator Robbins that if Twentieth Century Fox gave complimentary tickets for a special "Star Wars" showing to

^{19/} See analysis to questions (1), (2) and (3) in the Hopkins Opinion, 3 FPPC Opinions at 110-111. See, subsequent advice to Kenneth Hahn, Chairman, Los Angeles County Board of Supervisors (No. A-79-043, copy attached).

^{20/} Memorandum of Telephone Advice to Senator Alfred Song's Office, No. M-78-316 (copy attached).

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legislators for distribution at their discretion, all such tickets would be gifts to the legislator.^{21/}

Again, in 1977, we advised another legislator that when he asks a racetrack to provide free \$8 passes to four of his constituents these are gifts to the legislator, if the racetrack informs the legislator that complimentary tickets to the track are at his disposal or if the legislator frequently asks that complimentary tickets be provided by the track and the track honors such requests. The tickets are then under his control or direction regardless of whether he personally handed them to his constituents.^{22/}

In 1983, we considered the situation of Los Angeles City Councilman Hal Bernson who wrote to us regarding the fact that "On September 1, 1982, my office received four season tickets to the Raiders games which were scheduled to be played in the Los Angeles Memorial Coliseum." We advised that all four sets of tickets should be valued according to their face value of \$18 multiplied by the number of tickets multiplied by the number of games.^{23/} Ultimately, it was determined on the particular facts of his situation that Councilman Bernson had not received a gift from the Raiders, because the Raiders had contracted in their lease to provide the tickets and had not controlled who received them, much like the 24 Forty-Niners' tickets reserved in the lease. In the case at hand, this exception is not applicable. The Mayor's tickets were not part of the 24 tickets contracted for in the lease, and were donated in the sole discretion of the teams.

Following the publication and dissemination of our advice to Councilman Bernson, your office, through Mr. Delventhal, requested our advice in May 1983, regarding the receipt of tickets by members of the Board of Supervisors in San Francisco. In response to that and a follow-up request, we wrote two letters to Mr. Delventhal. The first, dated June 1, 1983, (No. A-83-123) specifically referred to the Bernson letter and to the Hopkins Opinion. In that letter, we provided specific advice concerning receipt of free tickets by the Supervisors and possible disqualification arising therefrom. We also

^{21/} Advice Letter to Senator Alan Robbins, No. A-77-392 (copy attached).

^{22/} Memorandum of Telephone Advice, No. M-77-493 (copy attached).

^{23/} Advice Letter to Councilman Hal Bernson, No. A-82-211 (copy attached).

responded to Mr. Delventhal's request for advice on the subject of tickets being distributed at the Mayor's discretion. In the follow-up letter, dated June 10, 1983, (also No. A-83-123) we delineated how a gift of tickets and parking privileges could be kept below the \$250 threshold for potential disqualification.

Most recently, in November 1983, the Commission published its Bulletin (Vol. 9, No. 9, November 1, 1983, copy attached) which contained an article on "Proper Valuation and Reporting of Gifts," which again spelled out the foregoing requirements for the valuation of gift tickets.

The Tickets Were Not A Gift To The City

In order for the tickets to be considered a gift to the City (or the "Office of the Mayor"), instead of to the individual official (the Mayor), their receipt must comply with the requirements set forth in the Stone Opinion.^{24/} In the Stone Opinion, the Commission considered the treatment of free air transportation in a private plane provided to city officials in connection with official city business. In order for it to be a gift to the City, it must meet four criteria spelled out in the Opinion. In addition, its use would have to be limited to official city business, which was not the case with the tickets here.

The gift here meets none of the four criteria.^{25/} Furthermore, with the exception of attendance at official Opening-Day ceremonies for the Giants, there is no indication that the Mayor was on official City business when she attended games at Candlestick.

Return or Repayment For Gift Tickets Must Occur Within 30 Days of Receipt

The materials submitted by you indicate that the Mayor has made two payments to the Forty-Niners for tickets in 1983; none to the Giants. As we advised in our two previous letters to Mr. Delventhal in June of 1983, any return of these tickets or payment in full or in part (to lower the value of the gift received) must occur within 30 days of receipt. This has been the consistent advice of the Commission for many years and was recently restated in the November 1983, Bulletin article, supra, and the Bernson letter, supra.

^{24/} Opinion requested by Peter G. Stone, No. 77-003, June 9, 1977, 3 FPPC Ops. 52 (copy attached).

^{25/} Id., at 3 FPPC Ops. 59.

The definition of "gift" in the Act is "any payment to the extent that consideration of equal or greater value is not received." Section 82028(a). Gifts which are not used and which, within 30 days after receipt, are returned to the donor or delivered to a charitable organization, without being claimed as a charitable contribution, are not considered gifts within the Act. Section 82028(b)(2). Consequently, if a gift is received and not returned unused within 30 days, then it is both reportable (if worth \$50 or more) and a potential basis for disqualification (if worth \$250 or more) to the extent that equal or greater consideration has not been paid. That consideration (normally in the form of money) must also be paid within the 30 day period. See FPPC Bulletin, supra.

In our October 25, 1976, letter to George R. Corey (No. A-76-231) we advised that a city councilmember could not make a payment more than 30 days after receipt of the gift and thereby reduce the value of the gift ex post facto. This advice was also given in the Bernson letter, supra (at page 7). In addition, the same advice was recently given to several members of the Los Angeles County Board of Supervisors who sought to reduce, after the fact, the value of gifts of tickets which they had received from the symphony and sports teams.^{26/} These Supervisors sought to reduce the amount of the gifts they had received from \$250 to \$249 by sending a check (six months or more later) for \$1 to the donor. We advised that this was not possible.

The tickets are received as a gift when they arrive, not when they are used (as you have argued). Again, this has consistently been our advice. Here, the Mayor received Giants' tickets on March 21, 1983, and has made no payment at any time, nor were the tickets returned. The Forty-Niners' tickets were received on August 1, 1983, and the first payment was made some 100 days later in November 1983.^{27/} In December 1983, some tickets were returned. In December, the Mayor made a second payment to the

^{26/} Advice letters to Supervisors Deane Dana (No. A-83-243), Michael D. Antonovich (No. A-83-231) and Peter F. Schabarum (No. A-83-244) (copies attached). It should be pointed out as well that similar telephone advice was rendered just last week to Mr. Delventhal who was calling on behalf of a San Francisco supervisor who had received a free trip from one of the teams.

^{27/} On or about November 10, 1983, the Mayor paid the Forty-Niners \$125 for the free tickets.

Forty-Niners.^{28/} None of these was either timely enough or large enough to negate the gift to the Mayor of Forty-Niners' tickets in excess of \$250.

You have advanced the theory that the tickets are gifts only when they are "accepted" and that they are only "accepted" when they are used, not when they are received. You cite the common law definition of a gift as support for your theory. Assuming arguendo that the common law would support your theory, it is, nonetheless, inapplicable here. The Act contains a specific definition of "gift" and consequently abrogates the common law on this subject. Section 82000 specifically provides that the definitions in the Act shall control. (See, generally, Statutes, Sec. 5, 58 Cal. Jur. 3d 300-303, and authorities cited therein.) The Commission is the primary authority for interpretation of the Act. Section 83111. The theory which you advance was specifically rejected by this Commission in the Hopkins Opinion, supra. Furthermore, it is unsupported by a careful reading of the Act, which consistently and repeatedly speaks of gifts in the context of being "received."

Receipt of the gift may be negated pursuant to Section 82028(b) (2) if it is returned unused "within 30 days after receipt" (emphasis added). Clearly, it is receipt which is the key element under the Act. Section 87103(c) confirms this when it refers to "income [which includes gifts] ... provided to, received by or promised to the public official within 12 months prior to the time when the decision is made" (emphasis added). To interpret these provisions otherwise would be to vitiate the purposes of the Act. A large gift could be delivered, but not "accepted" by the official until after the decision, thus avoiding disqualification entirely.^{29/} Lastly, it should be noted that the reporting of gifts required by Section 87207(a) (4) specifically asks for the "date

^{28/} On or about December 21, 1983, the Mayor paid the Forty-Niners another \$200 for the free tickets.

^{29/} In the case of season tickets, thousands of dollars worth of tickets could be provided to an official, but if the first game was several weeks away, the official could make decisions in the meantime without a requirement of disqualification because none had been used. An analogous situation could arise with gift airline tickets to Hawaii for a trip to begin two months following the date of a decision. Obviously, such a result is not intended by the Act.

on which the gift was "received" (emphasis added).^{30/} The requirement is not for the date "used" or "accepted." Within the Political Reform Act, it is clear that acceptance of a gift is deemed to have occurred when it is received, but may be negated if the official takes certain actions within 30 days following receipt.

Once again, our advice on this subject has been consistent over the years. For instance, when the State Capitol restoration was completed, a gala reception was held to celebrate. Legislators received complimentary tickets to the Gala in December 1981; however, the event was not held until January of the next year. We advised that the tickets were reportable for the year in which they were received, not the year in which they were used.^{31/}

It should be pointed out here that even under your theory the partial payments made by the Mayor to the Forty-Niners were not timely made. On August 14, 1983, six tickets (at \$25, equaling \$150 total) were used by the Mayor's campaign volunteers -- clearly they received these tickets because of their connection to her, they are not City personnel. On August 27, 1983, another eight campaign volunteers again used the Forty-Niners' tickets (at \$25, equaling \$200 total). The first payment was not made until 75 days later. By then, four tickets had been held for Oakland Mayor Lionel Wilson (also not a city official), and Mayor Feinstein had utilized three tickets herself; not to mention tickets given to her spouse and daughter, as well as other political associates, such as Nancy Pelosi and Louise Renne (who, as a Supervisor, presumably had received tickets of her own).^{32/} Consequently, the payments were both too little and too late under your analysis as well as under ours.^{33/}

^{30/} The Mayor recognized this aspect of the law. In her Statements of Economic Interests filed for the years 1975, 1976 and 1977, she reported receipt of hundreds of dollars worth of Giants' and Forty-Niners' tickets while serving on the Board of Supervisors. They are reported when received and probably were not personally used by her to any greater extent than in recent years.

^{31/} Memorandum of telephone advice, M-82-101, copy attached.)

^{32/} For 1982, Supervisor Renne reported receipt of Forty-Niners' tickets and payment for some of those tickets, presumably she also received tickets for the 1983 season.

^{33/} Furthermore, using the theory that the tickets are not "received" until actually used would push back the start of the 12-month window of potential disqualification to a later date. Under our analysis, that period will expire in August 1984; under your theory, it would be at least a month or two later.

Materiality

Having determined, above, that the Giants and the Forty-Niners are sources of income to the Mayor within the meaning of Section 87103(c), it therefore follows that she will be required to disqualify herself as to decisions having a reasonably foreseeable material financial effect upon these sources of income, so long as the effect is distinguishable from the effect on the public generally.

Taking these two concepts in reverse order, we can safely say that any decision with regard to the stadium which will have an effect upon the Giants or Forty-Niners, which is large enough to be material, will also be distinguishable from the effect on the public generally. See, Commission regulation 2 Cal. Adm. Code Section 18703, copy attached.

The issues of foreseeability and materiality are more involved^{34/} and the results in this case may well differ from decision to decision and action to action. Certainly, some of the actions which the Mayor proposes to undertake or to participate in would have reasonably foreseeable material financial effects on either the Giants or the Forty-Niners. As indicated in the June 1, 1983, Delventhal letter, the negotiation of lease terms with the teams would be in that category. Placing the stadium sale and construction matters on the ballot (as differentiated from campaigning for their passage) is another governmental decision which falls into this category. Lease of luxury boxes also will have such an effect -- witness the magnitude of that issue in the on-going saga of the Oakland/Los Angeles Raiders, et al.^{35/} Site selection may or may not have such a foreseeable effect; the same would be true of site acquisition. The commissioning of traffic studies and other feasibility studies may or may not. Certain stadium design issues, such as the number and configuration of seats, would almost assuredly have a material financial effect upon the teams; on the other hand, the exterior aesthetics of the stadium quite probably would not.

^{34/} See, Opinion requested by Thomas Thorner, No. 75-089, 1 FPFC Opinions 198, December 4, 1975; and 2 Cal. Adm. Code Section 18702 (copies attached).

^{35/} See also recent newspaper articles on this subject; specifically, front page story in the February 24, 1984, San Francisco Examiner indicating that the teams are being asked to pay \$6.5 million per year to lease the luxury box seats in the proposed stadium. That sum alone is by definition material. 2 Cal. Adm. Code Section 18702(b).

Each of the decisions and actions which the Mayor desires to undertake will need to be examined to ascertain whether or not it meets the criteria requiring her disqualification. However, some relatively minor decisions may well be so intertwined with the overall question that they cannot legitimately be separated out and disqualification as to them will be required.

Legally Required Participation

Despite the existence of a conflict of interest otherwise requiring disqualification, in certain restricted circumstances^{36/} officials are permitted to make governmental decisions. Section 87101. The operation of this provision is specifically delineated by the following Commission regulation:

(a) A public official is not legally required to make or to participate in the making of a governmental decision within the meaning of Government Code Section 87101 unless there exists no alternative source of decision consistent with the purposes and terms of the statute authorizing the decision.

(b) Whenever a public official who has a financial interest in a decision is legally required to make or to participate in making such a decision, he or she shall:

(1) Disclose as a matter of official public record the existence of the financial interest;

(2) Describe with particularity the nature of the financial interest before he or she makes or participates in making the decision;

(3) Attempt in no way to use his or her official position to influence any other public official with respect to the matter;

(4) State the reason there is no alternative source of decision-making authority;

(5) Participate in making the decision only to the extent that such participation is legally required.

(c) This regulation shall be construed narrowly....

2 Cal. Adm. Code Section 18701.
(Emphasis added.)

^{36/} 2 Cal. Adm. Code Section 18701 (copy attached).

George Agnost
March 5, 1984
Page 18

As can be seen, the exception is to be narrowly construed and in no event would permit the Mayor to lobby members of the Board of Supervisors regarding passage of ordinances or resolutions putting the stadium issue on the ballot. This would apply as well to the Planning Commission or other bodies which are considering actions which will have a material financial effect on one of the teams. However, the Mayor could sign or veto any ordinance on the stadium issue as long as she first makes the required declaration. As to those decisions which will have a material financial effect and where her appointed staff or other officials can legally function (unlike signing or vetoing supervisorial legislation) then her participation is not legally required and responsibility will have to be delegated to her staff and to the boards and commissions with jurisdiction over the particular issue.

There Is No Basis For A Special Exception

You have argued that an exception should be made in this case because the decision on the stadium question is important to the citizens of San Francisco. The Act contains no such exception. In fact, the purpose and thrust of the Act is just the opposite. The disqualification provisions apply to public officials "at any level of state or local government."

It is clear that the people of California did not intend that special exceptions be made for certain officials. They established the Fair Political Practices Commission as an independent body to ensure that such exceptions would not be made. Moreover, the more important the decision, the more important it is that the citizenry have full and complete confidence in the impartiality of the official or officials making that decision. This is accomplished by eliminating even the appearance of a conflict of interest. Witt v. Morrow (1977) 70 Cal. App. 3d 817, 823.

It should be remembered that the Mayor could have followed the lead of several of the Supervisors and either returned or paid for all or part of the tickets within 30 days of receipt and thereby avoided the problem. In addition, it is clear from Mr. Lazarus' statement that he was aware of Commission rulings on the question of receipt of free tickets, but did not seek our advice as to the Mayor's situation.

Lastly, we have not been insensitive to the interests of the citizens of San Francisco in having this issue brought before them. The Hopkins Opinion, at 3 FPFC Opinions 116-117, held that where the basis for a disqualification emanated from receipt of a gift from a donor seeking a governmental decision by the official's agency, disqualification would be absolute and the exception for legally required participation would not apply.

George Agnost
March 5, 1984
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However, the Commission's holding in Hopkins was based upon the Commission's concern that permitting the legally required participation exception to apply in the case of gifts:

...would permit a donor to make gifts to every member of the city council and would allow interested councilmembers to participate in decisions affecting the donor. Interpreting Section 87101 to include conflicts arising because officials have accepted gifts would condone or even encourage circumvention of the Act's conflict of interests provisions.

We think that the Commission's concern in Hopkins is not applicable in the case of the Mayor because she cannot invoke the exception of legally required participation until the Board of Supervisors acts first, since her role is limited to signing or vetoing the Board's legislative actions.^{37/}

We believe that the narrow scope of the Mayor's participation under the exception of legally required participation insures against the potential problems that were the source of the Commission's concern in Hopkins and, consequently, as to those few actions where disqualification is required and the standards of 2 Cal. Adm. Code Section 18701 are met, she may participate as legally required.

Amendments to Statements of Economic Interests

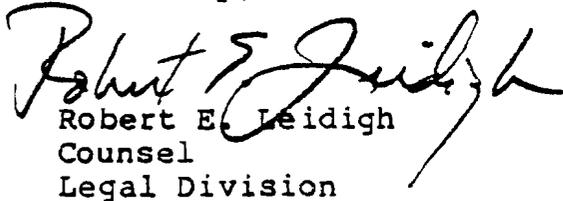
The Mayor should forthwith amend her Statements of Economic Interests, in accordance with the Commission's long-standing advice to reflect the receipt of Giants and Forty-Niners tickets over the last several years. We stand ready to assist your office and the Mayor in determining the proper valuations for such reporting.

^{37/} She may also exercise her appointment authority to select others who will make decisions. However, the appointment decisions are not likely to foreseeably have a material financial effect upon the teams, unless the prospective appointee has promised how he or she will act, if appointed. Consequently, the issue of legally required participation is inapplicable to those decisions.

George Agnost
March 5, 1984
Page 20

Should you have further questions regarding this matter or regarding the advice contained in this letter, please do not hesitate to contact this office. I may be reached at (916) 322-5901.

Sincerely,


Robert E. Leidigh
Counsel
Legal Division

REL:km



George Agnost,
City Attorney

January 20, 1984

JAN 20 2 15 PM '84
F P C

State of California
Fair Political Practices Commission
P O Box 807
Sacramento, California 95814

Attention: John Keplinger, Executive Director

Re: Receipt of Professional Sports Tickets by the Office
of the Mayor of the City and County of San Francisco

Dear Mr. Keplinger:

Preliminary Statement

Recently this office was called upon to review the long-standing practice of the Office of the Mayor of the City and County of San Francisco respecting tickets made available by the San Francisco Giants and Forty-Niners, to wit: these tickets have always been considered an offer to the Office of the Mayor rather than to the individual mayor.

I would like to share with you and your staff our analysis of this question, based upon the historical practices of the Office of the Mayor, and the legal principles upon which we rendered our earlier advice to the former Mayor. This office would be pleased also to receive your advice and guidance in this matter.

The City and County of San Francisco is entering upon a course of inquiry into the condition of its aged and deteriorating stadium, Candlestick Park. Weighty municipal decisions committing the people of San Francisco to costly construction projects and to a long-term view of an important public facility, a municipal stadium, face San Francisco. The Mayor enjoys unique powers and bears heavy responsibilities for

overseeing the government's response to the problems posed by Candlestick. Her participation, leadership and counsel are essential to the resolution of these questions. It is with these facts in mind that we proceed to an analysis of the practice as is has developed over three administrations in the Office of the Mayor.

We are aware that a rote application of the gift provisions in the Political Reform Act of 1974 in this instance might preclude the current Mayor's participation in the public debate over whether to build a new municipal stadium to house the Giants and the Forty-Niners. Under the Charter, the Mayor alone has the authority to address general municipal problems (such as the need for a new stadium) and to coordinate the formulation of an informed policy to address that problem. We are therefore particularly concerned that the Mayor continue to be able to play the central role contemplated for her office by the San Francisco Charter.

Historical Background

The relevant history of this situation is basically as follows. The San Francisco Giants have been a tenant of a City stadium since 1958. Since 1960, they have leased Candlestick Park for all their home games. The San Francisco Forty-Niners have, since at least 1950, been tenants of city facilities, and since 1970, they have leased Candlestick Park for all their home games. Since the earliest days of the City's relationship with the Forty-Niners, complimentary tickets were made available to the Office of the Mayor. When the Giants came to San Francisco, a similar practice developed. See the statement of John DeLucca attached as Exhibit A to this letter.

In 1974, the Political Reform Act (hereinafter "the Act") was adopted, to become effective (with exceptions not applicable to the instant case) on January 7, 1975. In November of 1975, George Moscone was elected Mayor of the City and County of San Francisco. Shortly thereafter, he sought the advice of the City Attorney's Office regarding the application of the Political Reform Act to season box seats for Giants and Forty-Niners home games received by the Office of the Mayor.

Moscone seldom attended either Giants' or Forty-Niners' games except when asked to participate in some ceremony in his capacity as Mayor. He exercised no general control over the tickets. The Mayor seldom used the tickets himself, and, with rare exceptions, did not know whether the tickets were used at all. He was not consulted by those who did use the tickets nor was his approval sought. See the statement of Bernard Teitlebaum attached as Exhibit B to this letter.

In view of these facts, Mr. James Lazarus, a deputy city attorney serving under my predecessor, Thomas O'Connor, gave an oral opinion directly to Mayor Moscone that the tickets were not a gift to Moscone as the Mayor of the City and County of San Francisco. Rather, the Giants and the Forty-Niners offered the gift to the Office of the Mayor. Until someone took a ticket, the gift was not consummated. Taking a ticket constituted an acceptance, completing the gift transaction. The person who took a ticket would be accountable, as the donee under the Political Reform Act, for receipt of the gift. See the statement of James Lazarus attached as Exhibit C to this letter.

Based on these conclusions, a procedure was set into operation under which the tickets were maintained in files in the Office of the Mayor, first under the control of the press secretary, Mel Wax, and subsequently under the control of the appointments secretary to the Mayor, Cyr Copertini. The tickets were to be available on a first-come, first-served basis to any city employee or official who asked for them. Each person who took a ticket signed for it on a record maintained with the files. Each individual was also expected to keep his or her own personal record. If that officer or employee was subject to the reporting requirements of the Political Reform Act, the appropriate reports would be filed, and if the limits of the enactment were exceeded, he or she might be precluded from acting on some matter. See the statement of Cyr Copertini attached as Exhibit D to this letter.

The procedure created under Mayor Moscone was never embodied in any formal written document. Dianne Feinstein became Mayor in 1978, following the assassination of George Moscone. The established procedure for handling the tickets was continued, again by Mel Wax and Cyr Copertini.

The Giants and Forty-Niners consider the practice of providing complimentary tickets an essential part of their business operations. Both teams operate their franchises in a city stadium. The condition of that facility, its operation, maintenance, security and other accommodations, as well as the general public's satisfaction with it, are essential to the teams' operations. (See the letter of Corey Busch, Executive Vice President of the Giants, dated November 30, 1983, attached as Exhibit E; and the letter from Ken Flower, Director of Marketing and Community Affairs of the San Francisco Forty-Niners, dated December 12, 1983, attached as Exhibit F.) By witnessing the stadium's operation first-hand, public officials are better able to make informed judgments in setting city policies relating to the stadium.

Attached hereto as Exhibit G is a letter dated March 20, 1981, addressed to Dianne Feinstein from Robert A. Lurie, President of the San Francisco Giants. That letter exemplifies the relationship between the San Francisco Giants and the Mayor's Office. The Mayor's Office has made a search of its files, but is unable to locate the 1982 and 1983 transmittal letters, though they are probably similar in content to the 1981 letter. Nor have the Giants or the Forty-Niners been able to provide copies of the letters. However, the content of those letters is not so important as the model presented.

In the first two paragraphs, Mr. Lurie confirms arrangements for the Mayor and her entourage to participate in the Opening Day ceremony. We have advised the Mayor that the Opening Day tickets are not a gift within the meaning of the Political Reform Act. Rather, she and her entourage are the City's delegation to a civic event. Her presence at the game draws further media attention to the stadium, the team, and the game.

In the next paragraph, Mr. Lurie writes that he will be making available to the Office of the Mayor for the season eight deluxe mezzanine box seats; in the final paragraph he advises that National League passes will be sent to the Mayor and her husband.^{*} The last item clearly would constitute a gift if it were consummated. However, as noted above, the Mayor did not know what they were and threw them away.

Neither Mayor Moscone nor Mayor Feinstein made extensive use of the box seats. Disclosure statements filed by Mayor Moscone in 1976 and 1977 indicate that he used no tickets in 1976, and \$75.00 worth of tickets from the Giants and \$75.00 worth of tickets from the Forty-Niners in 1977. Copies of Disclosure Statements filed by Mayor Moscone and Mayor Feinstein under the Political Reform Act are included as part of the statement of Vern Luhman, attached as Exhibit H to this letter.

Disclosure Statements filed by Mayor Feinstein indicate that she has never used the box provided by the San Francisco Giants. For the first time in 1981, the Mayor used the

^{*}The Mayor received those passes, but did not know what they were and threw them away. See the statement of Dianne Feinstein, attached as Exhibit I to this letter.

Forty-Niners' box. But instead of going to the games, she gave the tickets to Assembly Speaker Willie Brown. She was also the guest of Eddie Debartello, Jr. at a number of home games and play-off games in 1981. In 1982, she gave four seats in the Forty-Niners' box to Assembly Speaker Willie Brown. She was not conversant with the details of the procedure set up by Mayor Moscone, and was unaware that she must report those tickets she actually used or gave to someone else. She has filed an amended report to remedy these oversights. See the statement of Vernon Luhman.

These facts prompted the following analysis, focusing on two separate problems:

- first, the receipt and reporting of the tickets as gifts; and,
- second, the effect of the receipt of gifts on the ability of a public official to participate in some governmental decision that may in some way affect donors.

In summary, we have advised that the delivery of tickets to the Office of the Mayor does not constitute a gift to the Mayor herself. The term "gift," as used in the Political Reform Act, has the same meaning attributed to it at common law. Hence, there must be both a delivery and an acceptance of the gift. Under the practice adopted after the inauguration of Mayor Moscone, tickets were deemed a gift to the person who used them. Except to the extent the Mayor used tickets himself or herself, or gave them to others, no gift was made to the then Mayor. This advice is consistent with that given earlier by this Office to the former Mayor.

See Exhibit J attached to this letter for a fuller discussion of the legal principles upon which we based our earlier and contemporary advice.

Conclusion

For all the reasons set forth above, it is submitted that the delivery of free tickets to the Office of the Mayor by the Forty-Niners and the Giants does not constitute a gift within the meaning of the Act unless and until some member of the Mayor's staff, or the Mayor herself, or any other city official who requests the tickets, takes the tickets and assumes possession and control. Dianne Feinstein followed an established practice in the Office of the Mayor. That practice was based upon oral advice given to Mayor Moscone by this Office in light of the best information then available, and carried out by the same personnel under both administrations.

John Keplinger

6

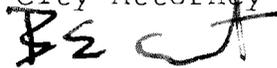
January 20, 1984

Any inaccuracies in that practice have since been corrected, and the Mayor and this Office welcome any further advice from you and your staff on this subject. Prompt resolution of this issue is highly desirable for the people of San Francisco, in order for our City to develop a sound and responsible municipal policy on the downtown stadium.

Very truly yours,



GEORGE AGNOST
City Attorney



Burk E. Delventhal
Deputy City Attorney

Enclosures

0524C

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance •• Administration •• Executive/Legal •• Enforcement •• Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

Mar 22 1984

March 22, 1984

Buck Delventhal
Deputy City Attorney
City Hall
San Francisco, CA 94102

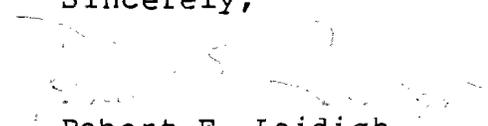
Re: Previous Advice Regarding Mayor Feinstein's
Participation in Rent Control Veto Decisions

Dear Mr. Delventhal:

I have been contacted by Robert DeVries who requested a copy of any past advice regarding Mayor Feinstein's participation in vetoing rent control measures. Since the matter is in litigation, I felt it only fair to provide your office with a copy as well. The Commission takes no position in the litigation, but is merely furnishing both parties with a copy of documents which are a public record. The advice is memorialized in our advice memorandum No. M-80-074.

In our telephone conversation of March 6, 1984, regarding my advice letter of March 5, 1984, the Mayor expressed some surprise at my advice that her staff could be delegated the decisions on the stadium issue (assuming that individual staff members don't also have conflicts). Her surprise apparently stemmed from oral advice which she received at some time in the past on a rent control issue. I am now advised that she was indeed told that her staff was disqualified on a particular rent control issue in the past because the specific facts present in that case were such that her staff could not operate free of her direction and control. I hope that this clears up any confusion on that point.

Sincerely,


Robert E. Leidigh
Counsel, Legal Division

REL:km
cc: Robert DeVries, Esq.

EXHIBIT "A"



March 20, 1981

Honorable Dianne Feinstein
Mayor of the City and County of San Francisco
Room 200, City Hall
San Francisco, California 94102

Dear Dianne:

I am delighted that you will be able to join us on Opening Day to throw out the ceremonial first pitch. Game time is 1:05 p.m. and we would like for you to arrive on the field no later than 12:45 p.m.

Enclosed are your six special field box seats for Opening Day. We will deliver to your office shortly, your eight Deluxe Mezzanine Season Boxes for your Opening Day party of fourteen.

Once again, I am pleased to provide your office with the eight seat Deluxe Mezzanine Season Box for your use during the entire season. Included with your season tickets will be Stadium Club and Preferred Parking privileges.

National League Passes for both you and Dick will also be sent to you for your use when visiting other National League cities. I will forward these passes to you when they become available.

Again, I look forward to seeing you on Opening Day, April 9th, and I hope to welcome you often to Candlestick during what we all believe will be an exciting season.

Kindest regards,

Sincerely,

GIANTS



Robert A. Lurie
President

RAL/ecm

EXHIBIT "B"

STATEMENT OF JAMES MOLINARI

My name is James Molinari. I am currently an Inspector with the San Francisco Police Department, permanently assigned to the Office of the Mayor of San Francisco. I have occupied this position for the past six-and-a-half years.

At some time after I was assigned to the Mayor's Office, I became aware of a procedure whereby season tickets sent by the Giants and the Forty-Niners to the Office of the Mayor were made available to city officials and employees, and members of the public, who were interested in attending particular games.

Under that procedure, Mel Wax of the press office maintained a file containing the tickets. The tickets were available on a first-come, first-served basis. Those persons wanting tickets would sign out for them, indicating the date of the event for which the tickets were taken. It was my understanding, based upon informal discussion with the Mayor's staff and upon what I had heard regarding the advice of James Lazarus, at that time a deputy city attorney, that Mayor Moscone was only responsible under the Political Reform Act for those tickets he actually used. This practice continued unchanged when Dianne Feinstein took office.

About three seasons ago, after Mel Wax resigned, I was asked to handle the tickets. (One of the Mayor's secretaries maintained the ticket file during a short interim period.) I did so, using the same procedures as followed under the Moscone administration.

While the tickets were within my oversight, I never approved or disapproved requests for tickets. Rather, the tickets were still made available on a first-come, first-served basis. Anybody taking a ticket or tickets would sign up on the "calendar" maintained with the file. This practice made particular sense with regard to the baseball tickets, due to the great number of games involved. Mayor Feinstein was not consulted or informed as to who made use of the tickets, nor did she herself use or distribute the tickets. The only exception I recall is when Mayor Feinstein gave Forty-Niners tickets to Assembly Speaker Willie Brown.

Approximately a year ago, the Mayor decided to move the tickets to a more secure place so as to ensure their availability for distribution to as many city officers, employees, and community representatives as possible. Responsibility for the physical security of the tickets was transferred to Cyr Copertini, the Mayor's appointment secretary, and the tickets were placed in a locked file cabinet in Ms. Copertini's office. I have, during the time since, continued to receive requests for tickets and distributed them in the same manner.

At the direction of the Mayor and the Office of the City Attorney, I was assigned to investigate and respond to the Commission's inquiries of February 9, 1984. In preparing these responses, I spoke with various personnel of the Office of the Mayor responsible for the receipt of mail and for the handling of these tickets. I have also personally examined the records of the Office of the Mayor.

Question 1: I have spoken to the office staff who handle incoming mail for the Office of the Mayor, as well as others knowledgeable about the ticket procedure; I have also personally searched the archives for the past three years. Based upon that examination, I have determined that the Office of the Mayor did not receive any National League passes in 1981, 1982 or 1983. The only reference I was able to locate in any record of the Office of the Mayor was in the 1981 letter of Robert Lurie.

Question 2: The 1983 Giants tickets were received on or about March 21, 1983. There were 496 tickets, at \$8.00 a piece, for a total face value of \$3968.00.

The 1983 Forty-Niners tickets were received on or about August 1, 1983. There were 80 tickets, at \$25.00 a piece, for a total face value of \$2000.00.

Question 3: The Mayor paid the Forty-Niners \$125.00 on or about November 10, 1983, and \$200.00 on or about December 21, 1983, for tickets she and her guests used for the Forty-Niners games on November 6, 1983 and on December 19, 1983, respectively..

Question 4: The Office of the Mayor received parking passes, five per game, from the Forty-Niners for the 1983 season, and none from the Giants. However, the Mayor has her own parking pass issued by the Police Department, and never made use of those received from the Forty-Niners. The parking passes from the Forty-Niners were available to individuals signing up for game tickets, although there was no separate sign-up procedure. I am aware that at least some of the people taking tickets also made use of the parking passes.

The Giants tickets were stamped by the management to include Stadium Club privileges; anyone using the ticket could take advantage of those privileges, although the Mayor herself did not do so. The Forty-Niners did not provide Stadium Club privileges as part of the tickets or separately.

The Mayor never went to the Stadium Club in 1983, and did not make any payments for these privileges.

Question 5: The following individuals attended Forty-Niners games in 1983 with tickets received by the Office of the Mayor —

"Gonzales, Ross, Johnson, Watson, A. Gonzales and M. Gonzales" (8/14/83): Jim Gonzales is a Special Assistant to the Mayor; Maria Gonzales is his wife. Alexis Gonzales (no relation), Fred Ross, Robert Johnson and Floyd Watson are all volunteers from the Mayor's campaign organization.

"Betty Landis, Bob Landis, and 6 campaign staff members" (8/27/83): Betty and Bob Landis are volunteers from the Mayor's campaign organization. We are unable to identify by name the other individual campaign staff members who attended this game.

"Gilford, Ryan, 4 held for Lionel Wilson but no show" (9/4/83): Rotea Gilford is the Director of the Mayor's Criminal Justice Council. Philip Ryan is a personal friend of Mr. Gilford. Lionel Wilson is the Mayor of Oakland.

"Dianne Feinstein" (9/25/83): Mayor of San Francisco.

"Dianne Feinstein, Richard Blum, Paul & Nancy Pelosi, Gene Gartland" (10/9/83): Richard Blum is married to the Mayor. Paul & Nancy Pelosi are personal friends of the Mayor; Ms. Pelosi is the State Democratic Chairman. Gene Gartland was, at that time, a Commissioner of the Port of San Francisco.

"Hazel, Gwen, Florence, Maurita, staff members" (10/30/83): all members of the Mayor's support staff. Hazel Jones is a clerk, Gwynn Vitello is the Office Manager and Florence Stagner and Maurita Gallen are secretaries.

"Dianne Feinstein, Richard Blum, Louise and Paul Renne, Gina Moscone, Kathy Feinstein, Rick Marino & Gene Gartland" (11/6/83): Louise Renne is a member of the San Francisco Board of Supervisors; Paul Renne is her husband. Gina Moscone is the widow of the former Mayor. Kathy Feinstein is the Mayor's daughter. Rick Marino is a personal friend of Kathy Feinstein.

"Hastings Law School, donation for raffle; Borvice" (11/13/83): Hastings Law School is a unit of the University of California. Al Borvice is a Hispanic neighborhood activist.

"Tickets returned to 49'ers" (12/4/83).

"Nemerovski, Moylan, Dianne Feinstein, Richard Blum, Kathy Feinstein, Rick Marino" (12/19/83): Howard Nemerovski, a local attorney, and John Moylan, a labor leader, are personal friends of the Mayor.

Question 6: The following community members and organizations attended Giants games in 1983 with tickets received by the Office of the Mayor --

Chuck Ayaia (4/10/83): head of Mission Catholic Youth Organization, Hispanic activist, Community College Board member.

Leroy King (4/10/83, 4/19/83): union activist, Redevelopment Agency board member.

Salvation Army (5/4/83).

Jim Roff (5/7/83): son of Deputy Mayor Hadley Roff.

John Monaghan (6/22/83): retired City employee.

Larry Simi (6/22/83): former City employee, now a lobbyist for Pacific Gas and Electric.

All of the other people indicated on the calender as having attended Giants games in 1983 with tickets received by the Office of the Mayor are members of the Mayor's administrative and support staff:

<u>Name</u>	<u>Title</u>
Patty Burke	Receptionist
Florence Stagner	Secretary
Maurita (Marie). Gallen	Secretary
Hazel Jones	Secretary
Robin Eickmann	Motion Picture Coordinator
Betty Guimares	Program Manager
Peter Nardoza	Program Manager
Rotea Gilford	Deputy Mayor for Criminal Justice
Hadley Roff	Deputy Mayor
Gwynn Vitello	Office Manager
Jana Murray	Program Manager
Ray Sullivan	Deputy Mayor for Budget
Ed Matelli	Police Officer
Don Hansen	Police Officer
Ray King	Program Manager
Cyr Copertini	Appointments Secretary
Jim Buick	Deputy Director, Criminal Justice
James Lazarus	Deputy Mayor

Question 7: Based upon my discussions with the Mayor's staff, my review of the attachments to the Statement of James Lazarus, and my own personal recollection of who made use of tickets during the period I have been involved in the

distribution, I estimate that approximately 90 to 95 percent of the people making use of Giants and Forty-Niners tickets received by the Office of the Mayor for seasons prior to 1983 were City officers or employees.



JAMES MOLINARI

EXHIBIT "C"



George Agnost,
City Attorney

February 16, 1983

State of California
Fair Political Practices Commission
1100 "K" Street Building
Sacramento, CA 95814

Attn: Robert E. Leidigh, Counsel
Legal Division

Re: Receipt of Professional Sports Tickets By
the Office of the Mayor of San Francisco
(Your File No. A-84-014)

Dear Mr. Leidigh:

We are writing in response to the inquiries contained in your letter of February 9, 1984. Our responses to Questions 1 through 7, and 9, are contained in the Statement of James Molinari, attached to this letter as Exhibit K. Our response to Question 8 is set forth below.

In response to Question 10, we have again been informed by the Office of the Mayor that they are unable to locate at this time any further documentation memorializing the receipt of tickets from the Giants or the Forty-Niners beyond that already forwarded to the Commission. The relevant lease provisions are attached as Exhibit L to this letter; copies of the Charter provisions cited in our legal analysis are attached as Exhibit M. Copies of the disclosure statements of Mayor George Moscone, inadvertently omitted from Exhibit H, are also included.

"Question 8. Specifically, what decisions or actions regarding the proposed new San Francisco sports stadium is the Mayor planning on making, or participating in, or using her official position to influence?"

Below is a comprehensive, if not exhaustive, list of the various areas in which decisions will have to be made in pursuing a new San Francisco sports stadium —

Recommendations to the Board of Supervisors for a Charter amendment providing for the sale of Candlestick Park; recommendations to the Board of Supervisors for submission to the voters of a bond proposal to finance a new stadium.

Voter approval of the same.

Site selection and acquisition.

Lease with property owners.

Lease with sports franchises.

Lease of luxury boxes to master tenant.

Lease of advertising rights.

Stadium design.

Disposition of Candlestick site.

For each of these activities, the Mayor contemplates undertaking a variety of roles. Some, such as making recommendations to the Board, require her direct participation in formulating legislation. Prior to making recommendations to the Board, the Mayor may commission further feasibility studies, in addition to the one already completed, to address issues such as parking and traffic, zoning, and environmental impact. The Mayor may also engage in negotiations to guarantee the sale or lease of luxury boxes, as well as the sale or lease of advertising rights (including naming the stadium), in order to present a clear picture of the available options for financing the stadium. The Mayor may determine that it is desirable for all of these activities to take place prior to submission to the voters, so that the people can make an informed decision.

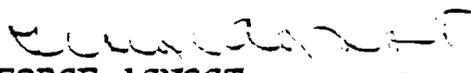
Once the measures are before the voters for approval, the Mayor anticipates campaigning for their passage by giving speeches and interviews, attending or hosting fund-raisers, privately lobbying interested groups or individuals, and otherwise facilitating the presentation of the issue to the people.

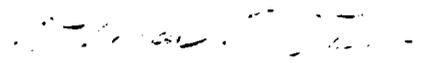
For the site selection and design and the disposition of the Candlestick site, the Mayor anticipates overseeing the gathering of information through various City departments,

formation of study groups, and presentation of final recommendations. The Mayor anticipates participating in many of the same activities for policy aspects of the lease issues, as well as taking part, where necessary, in the actual negotiations. The Mayor also anticipates taking part in any lobbying efforts to secure potential state or federal funding.

We would be pleased to offer whatever further assistance and cooperation you require in completing your inquiry.

Very truly yours,


GEORGE AGNOST
City Attorney


BURK E. DELVENTHAL
Deputy City Attorney

Enclosures



George Agnost,
City Attorney

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JAN 26 8 42 AM '84

January 24, 1984

State of California
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95814

Attn: John Keplinger, Executive Director

Re: Receipt of Professional Sports Tickets by the Office
of the Mayor of the City and County of San Francisco

Dear Mr. Keplinger:

Enclosed is the statement of Bernard Teitelbaum. This statement should be added as Exhibit B to complete this office's letter of January 20, 1984 to you and the Commission.

Thank you for your assistance in this matter.

Very truly yours,

GEORGE AGNOST
City Attorney

A handwritten signature in black ink, appearing to read "Burk E. Delventhal".

BURK E. DELVENTHAL
Deputy City Attorney

Enclosure