



California Fair Political Practices Commission

September 27, 1989

Barbara L. Zeid
Stradling, Yocca, Carlson
and Rauth
660 Newport Center Drive, Suite 1800
Post Office Box 7680
Newport Beach, CA 92660-6441

Re: Your Request for Informal Assistance
Our File No. I-89-493

Dear Ms. Zeid:

This is in response to your request for advice regarding the application of the Political Reform Act (the "Act")¹ to certain elected officers and staff members of the City of Lancaster (the "city"). Because your request is in the nature of general guidance, we are treating your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

If a developer reimburses the city for the cost of air transportation for all city councilmembers and staff members to attend a special meeting to view a residential development project similar to the one he is proposing to build in the city:

1. Will the councilmembers and staff members be required to report such reimbursement of the cost of air transportation on their statements of economic interests filed pursuant to the Act?
2. Will these councilmembers and staff members be disqualified from participating in any decisions involving land use matters in which the developer is an applicant?

¹ Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

CONCLUSION

The cost of air transportation provided by the developer is deemed to be a gift to the city and not to the councilmembers and staff members if the making and use of such air transportation is formalized in a resolution by the city council. Any benefit received by the councilmembers and staff members is merely reimbursement of expenses. Therefore:

1. The councilmembers and staff members are not required to report the cost of such air transportation on their statement of economic interests.
2. Since the air transportation is not a gift to the councilmembers and staff members, it does not give rise to any disqualification obligations.

FACTS

The city council of the City of Lancaster is considering calling a special meeting in San Diego, California, to view a development project constructed by a developer who is proposing to construct a similar project in the city. The city council has authorized the city to pay for the cost of chartered air transportation from Lancaster to San Diego for the councilmembers and staff involved in land use matters. There are no commercial flights from Lancaster to San Diego, and the nearest airport with commercial service to San Diego is Burbank, approximately 60 miles from Lancaster. The developer has offered to reimburse the city for the cost of chartered air transportation for all city officials and employees attending the special meeting. The developer will in no way be involved in the selection of the councilmembers or staff members who will fly to San Diego to view the project.

ANALYSIS

The thrust of your question is whether the reimbursement of the cost of air transportation by the developer to the city will constitute a gift³ to the councilmembers and the staff members.

³ Section 82028(a) defines a "gift" in relevant part as:

...any payment to the extent that
consideration of equal or greater value is not
received

Section 82044 defines a "payment" as:

...a payment, distribution, transfer, loan,
advance, deposit, gift or other rendering of money,
property, services or anything else of value,
whether tangible or intangible.

If it is a gift valued at \$250 or more, the councilmembers and staff members would have to disqualify themselves from any decisions which will have a reasonably foreseeable material financial effect on the developer which is distinguishable from the effect on the public generally. (Section 87103(e).) Gifts of \$50 or more are reportable on financial disclosure statements. (Section 87207(a)(1).)

In In re Stone (1977) 3 FPPC Ops. 52 (copy enclosed), the Commission concluded that in certain situations, a gift may be made to a city without providing any significant or unusual benefit to the public official. Under such circumstances, the public official has no reporting obligations since any benefit he or she receives, although free of charge to the official and to the city, "would be analogous to reimbursement for expenses or per diem from a state or local government agency, items which are not reportable. Section 82030(b)(2)." (In re Stone, supra, at 57.) The Commission stated that to be deemed a gift to the city, the gift (i.e., reimbursement) should satisfy at least the following four criteria:

1. The donor intended to donate the gift to the city and not to the official;
2. The city exercises substantial control over use of the gift;
3. The donor has not limited use of the gift to specified or high level employees, but rather has made it generally available to city personnel in connection with city business without regard to official status; and
4. The making and use of the gift was formalized in a resolution of the city council ... which embodies the standards set forth above.

In re Stone, supra, 3 FPPC Ops.
at 57.

You have stated that the developer has offered to reimburse the city for the cost of air transportation, rather than making an offer to reimburse the costs to the councilmembers and staff members directly. Further, the city is retaining substantial control over the use of the gift because the city is making the decision about who should attend the special meeting. The developer has not limited use of the gift to specified high level individuals. You have stated that the developer will in no way be involved in the selection of the councilmembers or staff members who will fly to San Diego for the special meeting. If, in addition to the facts you have provided, the making and use of the

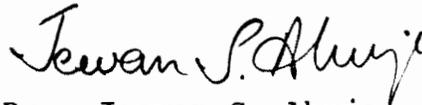
cost of air transportation provided by the developer is formalized in a resolution of the city council, the costs of air transportation would be deemed a gift to the city and not to the councilmembers and staff members.

If the gift of air transportation is deemed a gift to the city, the councilmembers and staff members have no reporting requirements since, as in the Stone Opinion, any benefit they receive would be analogous to reimbursement for expenses or per diem from the city. Such items are excluded from reporting under Section 82030(b)(2). Since such items are not gifts or income to the councilmembers and staff members, they do not give rise to any disqualification obligation under Sections 87100 and 87103.

I trust this letter has provided you with guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

KED/JSA/aa

Enclosures

STRADLING, YOCCA, CARLSON & RAUTH

A PROFESSIONAL CORPORATION

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August 17, 1989

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FPPC

Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

Attention: Kathrine Donovan

Dear Ms. Donovan:

The City Council of the City of Lancaster is contemplating calling a special meeting in San Diego, California, to view a residential planned community project constructed by a developer proposing to construct a similar project in the City of Lancaster. The purpose of the meeting would be to examine the character and quality of the development. The City Council has authorized the City to pay for the cost of chartered air transportation from Lancaster to San Diego for members of the City Council and City Managerial and Planning staff employees primarily involved in land use matters. There are no commercial flights from Lancaster to San Diego, and the nearest airport with commercial service to San Diego is Burbank, California, approximately 60 miles from Lancaster. The developer has offered to reimburse the City for the cost of chartered air transportation for all City officials and employees attending the special meeting. The developer will in no way be involved in the selection of the council members or staff members who will fly to San Diego to view the project.

On behalf of David McEwen, City Attorney of the City of Lancaster, the undersigned requests the F.P.P.C. to respond to the following questions:

1. If the full City Council and the City Manager and Planning Director and/or the staff members' appointees fly to San Diego via a chartered airplane to view the residential development project:

(a) will these individuals be required to report the reimbursement by the developer to the City of Lancaster for

Ms. Kathrine Donovan
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chartered air transportation to San Diego on their Statements of Economic Interest filed pursuant to the Fair Political Reform Act?

(b) will these individuals be disqualified from participating in any decisions involving land use matters in which the developer is an applicant?

2. If only three members of the City Council, selected randomly, and the staff members identified above fly to San Diego on a chartered airplane to view the residential development project:

(a) will these individuals be required to report the reimbursement by the developer to the City of Lancaster for chartered air transportation to San Diego on their Statements of Economic Interests?

(b) will these individuals be disqualified from participating in any decisions involving land use matters in which the developer is an applicant?

3. If only three members of the City Council, selected randomly, and the staff members identified above drive to Burbank at City expense and fly on a commercial airline to San Diego to view the residential development project:

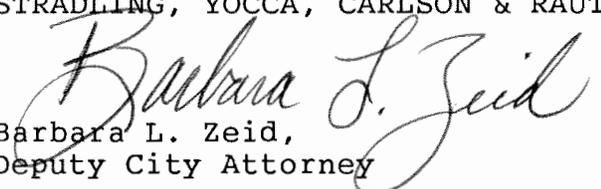
(a) will these individuals be required to report the reimbursement of commercial air transportation by the developer to the City of Lancaster on their Statements of Economic Interests?

(b) will these individuals be disqualified from participating in any decisions involving land use matters in which the developer is an application?

If you desire any further information, please contact me at my office at (714) 640-7035.

Very truly yours,

STRADLING, YOCCA, CARLSON & RAUTH


Barbara L. Zeid,
Deputy City Attorney

BLZ:kks
cc: David R. McEwen, City Attorney
2283/012



California Fair Political Practices Commission

August 21, 1989

Barbara Zeid
Deputy City Attorney
Stradling, Yocca, Carlson & Rauth
Post Office Box 7680
Newport Beach, CA 92660-6441

Re: Letter No. 89-493

Dear Ms. Zeid:

Your letter requesting advice under the Political Reform Act was received on August 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jeevan S. Ahuja an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in black ink that reads "Kathryn E. Donovan".

Kathryn E. Donovan
General Counsel

KED:plh