



FAIR POLITICAL PRACTICES COMMISSION

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September 14, 2007

Carol Federighi
Mayor, City of Lafayette
4 Quail Run
Lafayette, California 94549

**RE: Your Request for Advice
Our File No. A-07-139**

Dear Ms. Federighi:

This letter is in response to your request for advice regarding the conflict-of-interest provisions of the Political Reform Act (the "Act").¹ Please note that our advice is based solely on the provisions of the Act. We therefore offer no opinion on the application, if any, of other conflict-of-interest laws such as common law conflict of interest. However, you should seek additional assistance from the Attorney General's office or from your agency's legal counsel regarding Article XII, Section 7 of the California Constitution which prohibits state and local officers from accepting free or discounted transportation from a transportation company.

QUESTION

Are you prohibited by the Act from accepting an invitation from the French-American Foundation to attend a conference in Paris, France where free meals, travel, hotel accommodations, an evening concert and a tour of the frigate *L'Hermione* will be provided?

CONCLUSION

As long as distribution of the travel tickets, hotel accommodations and related meals are directed and controlled by the French American Foundation these items are not subject to the Act's gift limits and you are not prohibited from accepting them, but you

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 18110 through 18997 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.

must report these items as gifts on your annual statement of economic interests. The value of admission, and informational materials provided at the conference are not considered gifts and are not reportable. If your pro rata share of the evening concert exceeds \$50, it is reportable and subject to the Act's \$390 gift limit. The tour of the frigate *L'Hermione* would also be subject to the Act's gift limit and reporting requirements.

FACTS

You are the Mayor of the City of Lafayette, California. You and your spouse have been invited to an event hosted by the French-American Foundation, which is a non-profit 501(c)(3) tax exempt organization under the Internal Revenue Code. The event is a three-day conference in Paris, France marking the 250th anniversary of the birth of the Marquis de Lafayette. All of the mayors of cities in the United States named after the Marquis de Lafayette have been invited to attend. The suggested program provided to you by the event organizers states that the main goal of the conference will be to launch a discussion in the media concerning French public awareness of the overall reality of the United States and how French public awareness of the United States remains caricatured. There will be discussions about the creation of the transatlantic link between the United States and France and exchanges of views on the world of business, education, health, politics and French-American relations.

Admission to the conference is free and meals will be provided. There will be an evening concert offered on the second day of the conference and a tour of the frigate *L'Hermione* offered on the fourth day of the conference. The French-American Foundation has secured air line tickets from Air France for conference attendees and their spouses, and has arranged hotel accommodations for these guests at the Hotel Concorde La Fayette. You received an e-mail from the French-American Foundation stating that the airline tickets and the hotel rooms for the conference have been given to the French-American Foundation and the Foundation has direction and control over who will be given those accommodations. I also informed you by telephone to contact the Attorney General's office for further advice regarding the constitutional ban on travel payments from a travel company.

ANALYSIS

Gifts Generally

Section 87203 provides that "[e]very person who holds an office specified in Section 87200 shall . . . file a statement disclosing his [or her] investments, his [or her] interests in real property and his [or her] income . . ." Income includes gifts. (Section 82030.) As the mayor of the City of Lafayette, you are a person who holds an office specified in Section 87200. Additionally, Section 89503(a) provides that no elected officer of a local government agency shall accept gifts from any single source in any

calendar year worth in excess of the gift limit. The current gift limit is \$390. (Regulation 18940.2.) Gifts of \$50 or more in value must be reported. (Section 87207(a)(1).)

A “gift” is “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received . . .” (Section 82028(a).)

Exceptions for Travel Payments

However, where a gift is a gift of travel, Section 89506 controls whether the gift is subject to the gift limit. (Section 89506(b).) Section 89506 provides:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that are reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following apply:

“(1) The travel is in connection with a speech given by the elected state officer, local elected officeholder, candidate for elected state office or local elected office, an individual specified in Section 87200, member of a state board or commission, or designated employee of a state or local government agency, the lodging and subsistence expenses are limited to the day immediately preceding, the day of, and the day immediately following the speech and the travel is within the United States.

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, or a by a person domiciled outside the United States which substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.”

It appears that the conference you described in your letter is reasonably related to an issue of state, national, or international public policy pursuant to the exception in Section 89506 because the conference sessions will be used to discuss issues related to French-American public relations and governmental policies. Moreover, you stated that the event is hosted by the French-American Foundation, which is a non-profit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Consequently travel, lodging and related subsistence from the Foundation will be exempt from the gift limits of the Act. However, you must still report these payments as discussed below.

Reporting Third Party Payments for Travel

Public officials must disclose gift amounts on their annual statement of economic interests (Form 700). Public officials must report any gifts of \$50 or more from a single source in a calendar year. In determining the treatment of the gift, it is necessary to determine who the source of the gift is. "A person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary." (Regulation 18945(a).) Because the French-American Foundation has informed you that they have direction and control over the use of the airline tickets and hotel accommodations the source of these gifts is the French-American Foundation and not Air France or the Hotel Concorde LaFayette. Therefore, you will need to report the source of these payments as the French-American Foundation. We note, however, that our assistance is based on the facts you present; the Commission does not act as a finder of fact when it provides informal assistance. (In re *Oglesby* (1975) 1 FPPC Ops. 71.)

The Act requires that whenever goods or services must be reported, the amount to be reported is the "fair market value" as of the date the official receives or is promised the goods or services. This means you should report the amount you would pay to obtain the goods or services on the open market, not necessarily the amount paid by the French-American Foundation to provide the goods or services. You are required to append a description of the goods, services, facilities, or other thing of value to your statement of economic interests. (Section 82025.5; Regulation 18946.)

Travel Gifts to Spouses

Gifts of travel, such as tickets, given directly to members of an official's immediate family are not considered gifts to the official, unless the gifts confer a personal benefit on the official. (Regulation 18944(b).) A gift given to a member or members of an official's immediate family confers a "personal benefit" on an official when any of the following factors apply:

- (1) The official enjoys direct benefit from the gift, except for a benefit of nominal value.
- (2) The official uses the gift, and the official's use is not nominal or incidental to the use by the member or members of the official's immediate family.
- (3) The official exercises discretion and control over who will use or dispose of the gift.

In your case the invitation from the French-American Foundation states it is to be used by you and your spouse. Though you may receive some benefit by having your spouse attend the conference with you, this benefit is incidental rather than direct considering you are receiving the same gift from the Foundation as has been offered to your spouse. Therefore, you would have no need to use the portion of the gift that has been offered to your spouse. You do not have direction and control over who will use or

dispose of the gift because there is no indication that the Foundation's invitation can be extended to anyone other than you and your spouse. Thus, the gift offered to your spouse is not a gift to you and you do not need to report it on your statement of economic interests.

Conflict of Interest Disqualification

In addition, a public official who receives gift(s) of \$390 or more from a third party may have a financial conflict of interest under the Act. (Sections 87100 et seq.) The official must disqualify himself or herself from voting or otherwise participating in a governmental decision affecting that source, if the payment was received or promised to the official within 12 months preceding the decision. Note that while a gift of more than \$390 is permissible when the gift limits do not apply, as is the case in your situation, a gift at that amount can still result you being disqualified from participating in governmental decisions. Therefore, if you accept the invitation to the conference from the French-American Foundation and it is valued at \$390 or more, you may be prohibited from participating in governmental decisions in your capacity as mayor of Lafayette if they involve the French-American Foundation. If this occurs you should seek further assistance.

Conference Fees and Informational Material

Free or reduced-rate admission for a public official to an informational conference or seminar (when the official is not giving a speech) does not constitute a gift to an official. (Section 82028; Regulation 18942; 18942.1.) Any informational material, such as briefings, lectures, books, reports, handouts, pamphlets, or briefing notebooks, that an official receives at a conference are not subject to gift limits or reporting. Therefore, you do not need to report the value of admission to the conference or the value of any informational materials that are supplied to you as part of the conference because these items are not gifts under the Act. (Regulation 18942.1(a).) Nevertheless, since this exception only applies to the cost of admission to the conference and the value of any information provided, any meals or beverages you receive at the conference would still be considered gifts to you for purposes of the gift rules described above.

As part of the conference there will also be a tour of the hull of the *L' Hermione* offered on the fourth day. The *L' Hermione* is the frigate used by Lafayette to sail to America in 1780 and will sail to the United States in 2010. The Commission has interpreted "informational material" to include informational tours. (In re *Spellman* (1975) 1 FPPC Ops. 16.) "Informational material" means any item which serves primarily to convey information and which is provided to an official for the purpose of assisting him or her in the performance of his or her official duties. Informational material may include on-site demonstrations, tours, or inspections designed specifically for public officials. (*Briggs* Advice Letter, No. A-93-210.) The acquisition of adequate information is essential to sound legislative and administrative action. It is not the purpose of the Political Reform Act to interfere in any way in the free flow of information to officials. Only financial pressures and inducements are sought to be limited and disclosed. (In re *Spellman*, supra, 1 FPPC Ops. 16.)

We have looked at several factors when determining whether a tour is indeed informational material, including the fact that the tour will primarily convey information, the tour is specifically designed for public officials, and the tour was formally structured to convey information to the officials. We also look to see that the tour does not appear extravagant in value or nature in relationship to the information conveyed. (*Barker* Advice Letter, No. I-93-186.) The tour of the *L'Hermione* offered on the fourth day of the conference does not appear to be for the purpose of assisting officials in performance of their official duties, thus the value of the tour would be subject to the Act's gift limits and reporting.

Invitation Only Events

For invitation only events, like private concerts not open to the general public, public officials who attend are deemed to have received a gift equal to the pro rata share of the cost of the event, including the costs of the rental facilities and any entertainment provided. Regulation 18946.2 (b) and (c) provides:

“(b) Invitation-Only Events... when an official or candidate attends an invitation-only event such as a banquet, party, gala, celebration, or other similar function, other than a nonprofit or political fundraiser as set forth in Regulation 18946.4, the value received is the official's or candidate's pro rata share of the cost of the event, plus the value of any specific item that is presented to the official or candidate at the event.

“(c) Pro rata share of the cost of the event. The term ‘pro rata share of the cost of the event’ means the cost of all food and beverages, rent of the facilities, decorations, entertainment, and all other costs associated with the event, divided by the number of acceptances or the number of attendees.”

Therefore, should you attend the evening concert portion of the conference you will need to determine your pro-rata share of the cost of this event. If your pro-rata share exceeds \$50 it is subject to the \$390 gift limit.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Sukhi K. Brar
Counsel, Legal Division