



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

July 7, 2009

Heather Mahood
Assistant City Attorney
Office of the City Attorney
333 West Ocean Blvd., Eleventh Floor
Long Beach, CA 90802

**Re: Your Request for Advice
Our File No. A-09-156**

Dear Ms. Mahood:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTION

Does the granting of complimentary greens fees at golf courses owned by the City of Long Beach to members of the Long Beach Municipal Golf Commission (the "Golf Commission") pursuant to a contract between the city and a private company that manages the golf courses accomplish a governmental or public purpose under Regulation 18944.1(b)(2)(B), given the Golf Commission's duties with regard to the operation of the city's golf courses.

CONCLUSION

Under Regulation 18944.1, the Commission generally will defer to the discretion of the legislative or governing body of an agency to determine whether the distribution of a ticket or pass serves a legitimate public purpose of the agency, provided the determination is consistent with state law.

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.

FACTS

The City of Long Beach owns several golf courses, all of which are operated and managed by a private company, American Golf Corporation, pursuant to a long-term lease agreement. The Golf Commission is an agency created by city ordinance as follows:

“2.42.010 Created. There is created a commission to be known and designated as the Municipal Golf Commission

“2.42.020 Members. The Municipal Golf Commission shall consist of thirteen members. Ten members of the Commission shall represent organized golf clubs at Municipal golf courses, one from each of the following clubs: Recreation Park Men's Golf Club; Recreation Park Women's Golf Club; Recreation Park South Course Men's Golf Club; Recreation Park South Women's Golf Club; Skylinks Men's Golf Club; Skylinks Women's Golf Club; El Dorado Men's Golf Club; El Dorado Women's Golf Club; Heartwell Men's Golf Club; and Heartwell Women's Golf Club. The remaining three members of the Commission shall be designated as members at large.

“2.42.030 Duties. The duties of the Municipal Golf Commission shall be as follows:

“A. Generally to advise the City Manager and Council with reference to all matters concerning the operation of the Municipal golf courses, and the development of facilities for golfing;

“B. To recommend to the City Manager and Council the adoption of specific rules and regulations pertaining to the use of golf courses and to those portions of Municipal club houses used in connection with golf activities;

“C. To recommend the fees to be charged for the use of the golf courses;

“D. To recommend to the City Manager and Council such physical changes or other development of said Municipal golf courses as may, in the opinion of the Commission, be beneficial to their use;

“E. To recommend to the City Manager and Council the appointment of golf professionals and their duties and obligations;

“F. To act in an advisory capacity to the City Manager and Council in all matters pertaining to the proper functioning of Municipal golf courses;

“G. To study and familiarize itself with modern practices employed in the construction, use and maintenance of golfing facilities generally, to the end

that the Municipal golf courses may keep pace with the growth of the City and be representative of the best in such type of Municipal activity;

“H. To perform such other duties relating to the general field of the Commission's duties as may be lawfully required or suggested by the City Manager or Council.

“Nothing in this Section shall be deemed to invest the Commission with any supervisory powers over the actions and duties of City employees engaged in work relating to the construction, improvement, repair, maintenance, or operation of the Municipal golf courses.”

Section 2.6 of the lease agreement with American Golf Corporation requires it observe and comply with the city's existing policies concerning use of the golf course, including green fee discounts. For many years the city had a policy that permitted Golf Commission members to receive complimentary greens fees. On June 30, 2009, you confirmed that the members of the Golf Commission were designated employees in the Long Beach Conflict of Interest Code and file Form 700s.

ANALYSIS

Gifts, Generally

Section 82028 defines gift as:

“[A]ny payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.”

The Act imposes several responsibilities on public officials based on the receipt of gifts.

- Pursuant to the Act, every public official must disclose all his or her economic interests that could foreseeably be affected by the exercise of the official's duties. (Sections 81002(c), 87200-87313.) A “public official” is defined broadly to include every natural person who is a member, officer, employee, or consultant of a state or local government agency. (Section 82048; Regulation 18700.) Sections 87207 and 87302 provide that a public official who is required to disclose sources of gifts on his or her statement of economic interests must disclose the name and address of each source of \$50 or more in value, the amount and the date on which the gift was received, and that the official must provide a general description of the business activity of the donor.

- Moreover, Section 87100 prohibits any public official at any level of state or local government from making, participating in making or in any way attempting to use his or her official position to influence a governmental decision in which the official knows or has reason to know the official has a financial interest. (Section 87100.) An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating \$420 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(e).)
- And finally, the Act provides gift and honoraria limits with respect to local officials who are required to disclose gifts on their statements of economic interests. The current gift limit is \$420 per source per calendar year. (See Section 89503 and Regulation 18940.2.)

Gift Passes

You have asked about free admission to city-owned golf courses provided to members of the Golf Commission under Regulation 18944.1, which governs gifts of tickets or passes made by a public agency. Recently, the Commission adopted amendments to Regulation 18944.1, which requires that an agency establish, and follow, a procedure under which tickets or passes can be received and not be considered gifts to the official using the pass or ticket. Nothing in this regulation requires a state or local agency to follow its provisions. It merely provides an optional procedure for a public agency to use as a method for distributing certain types of tickets or passes to events where the tickets or passes will not be considered gifts because adequate consideration is provided. If the procedure is not followed, and the receipt of the ticket or pass is not treated as income by the official under applicable tax laws (See Regulation 18944.1(b)(1), the receipt of the ticket by a public official will be considered a gift subject to the Act's reporting and limitation provisions.

You have specifically asked about Regulation 18944.1 (b)(2)(B), which concerns tickets or passes that an agency obtains pursuant to the terms of a contract, or because it controls the events, or because it purchases the tickets at face value. Regulation 18944.1(b)(2)(B) states:

“With respect to a ticket or pass provided by the official’s agency to an agency official, which ticket or pass the agency obtains (i) pursuant to the terms of a contract for use of public property, (ii) because the agency controls the event (such as a state or county fair), or (iii) that is purchased by the agency at fair market value, the distribution of the ticket or pass is made in accordance with subdivision (c) below.

“(c) Any distribution of tickets or passes under subdivision (b)(2) by an agency to, or at the behest of, its officials must be made pursuant to a written policy duly adopted by legislative or governing body of the agency

that state the public purposes to be accomplished by the agency policy. If the agency maintains a website, the written policy shall be posted on the website in a prominent fashion. The written policy shall contain, at a minimum, the following:

“(1) A provision setting forth the public purposes of the agency to be accomplished by the distribution of tickets or passes;

“(2) A provision requiring that the distribution of any ticket or pass by the agency to, or at the behest of, an official accomplish a public purpose of the agency; and

“(3) A provision prohibiting the transfer by any official of any ticket or pass, distributed to such official pursuant to the agency policy, to any other person, except to members of the official’s immediate family solely for their personal use.”

You ask specifically whether the granting of complimentary greens fees to members of the Golf Commission accomplishes a governmental or public purpose, given the Golf Commission’s duties with regard to the operation of the city’s golf courses.

Under Regulation 18944.1(e), the Commission generally defers to an agency’s determination of whether its distribution of tickets or passes to its employees serves a legitimate public purpose and thus complies with subdivision (c) of the regulation. However, subdivision (e) also limits the agency’s discretion by requiring the distribution to be “consistent with state law.” Several statutes and court rulings govern the expenditure or use of public resources by state and local agencies. (See, e.g., Sections 8314, 54964 and 85300; Penal Code Section 424; and *Stanson v. Mott* (1976) 17 Cal.3d 206.) Generally, these rules permit agencies to expend or use their resources for public purposes within the express and reasonably implied parameters of their governing statutes but specifically prohibit them from using their resources for private or campaign purposes. The Commission’s intention in adopting subdivision (e) was to essentially treat these tickets as public resources held by the agency and to not question the agency’s expressed policy basis for the distribution unless the distribution is clearly an illegal use of public resources under these authorities. As a consequence, the Commission staff will not offer specific advice to governmental agencies as to whether or not a particular stated policy underlying the agency’s distributions of tickets adequately supports a legitimate public purpose.²

² Nevertheless, the Commission reserves the right to bring an enforcement action for violations of the Act’s gift provisions by public officials who receive passes or tickets distributed by their agencies when, for example, the agency does not comply with the general provisions of Regulation 18944.1, the agency distributes the tickets in a manner inconsistent with the policy adopted pursuant to Regulation 18944.1(c), the policy cited by the agency pursuant to Regulation 18944.1(c) is so vague as to be meaningless or was merely adopted as a pretext to allow distribution of agency assets to certain individuals under the guise of law, a court or a prosecuting authority such as the District Attorney or Attorney General has determined that distribution of the tickets violates the “use of public resources” rules referenced above, or facts beyond the stated policy clearly show that the distribution of tickets does not serve or support that policy in any plausible way.

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

Sincerely,

Scott Hallabrin
General Counsel

By: John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl