

July 29, 2014

Kurt T. Overmeyer  
Economic Development Manager  
City of Watsonville  
250 Main Street  
Watsonville, CA 95076

Re: Your Request for Advice  
**Our File No. I-14-118**

Dear Mr. Overmeyer:

This letter responds to your request for advice regarding the gift and travel provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and our advice is based solely on the provisions of the Act. Additionally, we cannot offer advice on past conduct; our advice below is not to be construed as applying to any actions that may have already occurred.

Because your question does not name the city councilmember who will join you or detail the amounts of the payments and the process by which the City received the payments, we are treating your request as one for informal assistance.<sup>2</sup>

### QUESTION

Are the described payments for travel, including transportation, lodging, and meals, for public officials to attend a trade mission to China subject to limits and reporting under the Act?

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<sup>1</sup> 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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

## CONCLUSION

An exception to the general rule that gifts of travel from a business entity are reportable and subject to gift limits applies where there is an official agency business purpose for the travel, as described in Regulation 18950.1. Based on the governmental purpose of your trip, and as explained in Section 89506, the gifts of travel from the foreign government are reportable, but not subject to limits.

## FACTS

You are the Economic Development Manager for the City of Watsonville. You and a Watsonville City Council member will join several other people, including other public officials from the central coast, as well as local business people, on an economic trade mission to China.

The Central Coast cities and counties have set up a partnership to help share the costs of business attraction. The partnership is called the Central Coast Marketing Team (“CCMT”). In 2013, the Central Coast region set up an EB-5 Regional Center<sup>3</sup>, which has also joined the partnership. This partnership also includes a group of Monterey businesses, Pacific Gas & Electric Co., and other public and private partners. The membership dues are scaled for public entities depending on size, and private entities pay a flat rate. The CCMT is planning a trade mission to China. Watsonville has been invited to become a “sister city” with the City of Qionghai, which has several industries that are complementary to industries in Watsonville. With the help of the EB-5 Regional Center, Watsonville has identified several companies in Shanghai that have a desire to begin production in the United States. At present, there are 59 meetings set up with private businesses to discuss opportunities in the Central Coast area. This trip will be entirely to help establish trade relationships, partnerships, and to attract new businesses to the Central Coast. You have not added that you or your colleague would be giving speeches or providing any other consideration during this trip.

The CCMT planned to finance the airfare and initial hotel stays in China until the group arrived at the government-owned residences. At that time, all expenses will be paid by the local Chinese governments. If necessary, you and your colleague plan to ‘pay down’ the amount of the gift of travel from CCMT before 30 days passes (see below) and Watsonville will reimburse you and your colleague for those expenditures.

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<sup>3</sup> EB-5 refers to foreign investments in American companies or industries. The term “Regional Center” refers to any economic unit, public or private, that is involved with the promotion of economic growth, including increased export sales, improved regional productivity, job creation, and increased domestic capital investment within the EB-5 program. The business models that are eligible to become EB-5 Regional Centers include governmental agencies, partnerships, corporations and any other existing U.S. commercial entity.

## ANALYSIS

### Gifts, Generally

The Act defines a gift as “any 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.” (Section 82028(a).)

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$440 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all city council members and other officials. (See Regulation 18940.1(b).)

Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interests. (Sections 87200 – 87210.)

Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$440 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 & 87103(e); Regulations 18700 & 18703.4.)

### Gifts of Travel

Generally, transportation, lodging and food paid for by a third party are reportable gifts under the Act. Therefore, absent an exception, the value of all travel-related expenses to China that the CCMT pays is a reportable gift. (Section 82028; *Reyes, et al* Advice Letter, No. A-14-071.)

### Gift of Travel - Exceptions

#### *Payments by a foreign government for travel*

Under some circumstances, even though a payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's current \$440 gift limit. In this regard, Section 89506(a) provides an exception from the gift limits for certain travel payments:

(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that is 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, a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or 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.

You and a city council member (among others) will travel to China for the specific purpose of facilitating investment and international trade conversations between China and the Central Coast area. Additionally, Watsonville and Qianghai are becoming “sister cities” to promote the relationship between the two regions and develop an economic and educational connection. The trip is therefore directly related to a legislative or governmental purpose.

Relevant to the present situation is Section 89506(a)(2), which provides that travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international policy, are *not prohibited or limited* if they are provided by certain specified sources, one of which is a foreign government.

According to the facts, two separate sources will provide funding for the expenses involved with the trip. The payment for the international air travel was paid by CCMT, but the City intends to reimburse CCMT for the costs. The remaining expenses incurred while in China will be paid by the local foreign government of Qionghai.

CCMT is not a 501(c)(3) non-profit corporation and does not qualify for the exception in Section 89506(a).

The second source for payments related to this trip, however, will be a foreign government. We have repeatedly advised that travel expenses provided by a foreign government to a public official to explore a sister city relationship or to work with a sister city meets the reasonably related test of Section 89506. (See *Remelmeyer* Advice Letter, No. I-98-211.) Therefore, the costs of the public official's travel paid by the foreign government are exempted from the gift limit. Even if the payments do not count towards the gift limit, they are still reportable and may subject the public official to disqualification under the conflict-of-interest rules. (Sections 87207 and 87103.) Any payments, however, that are made for items other than transportation and related lodging and subsistence may be considered a reportable gift subject to the \$440 gift limit and the conflict of interest provisions of the Act<sup>4</sup> because those items would not be related to a legislative or governmental purpose.

*Payments to an agency for travel*

With respect to the payments by CCMT, there is also an exception for payments that are made for travel that does not confer a benefit on the public officials and for travel that is for the purpose of facilitating the public's business. (Regulation 18950.1, copy enclosed.) Under certain circumstances, such payments are not considered a gift or income. The following requirements must be met for this exception to apply:

“(1) The payment is made directly to or coordinated with the government employer as set forth in Regulation 18950.1(b) and not made to the employee using the travel.”

This factor is met because CCMT has coordinated with the governmental entities involved to ensure adequate representation from the area attends the meetings.

“(2) The payment is used for official agency business as specified in Regulation 18950.1(c).”

This factor is met because the payments are being used to support two city officials' trip to China where they will meet with several companies, local governments, and others to enhance the relationship between the city of Watsonville and Chinese trade and towns. As discussed below, while this purpose is not specifically listed in Regulation 18950.1(c), it is of the type of purpose that the regulation covers.

“(3) The government employer determines the official who will make use of the payment as provided in Regulation 18950.1(d).”

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<sup>4</sup> Although the gift limit is \$440, for conflict of interest purposes an official has a financial interest in any source that makes a gift of \$440 or more. If this is a concern, and you choose to take the option of paying down the gift, you may want to pay it down to below this threshold.

This factor is met because the City made the decision to send a city councilmember as well as the City's economic development manager.

“(4) The payment provides no personal benefit to the official who makes use of the payment as provided in Regulation 18950.1(e).”

We do not have adequate facts to assess this factor. This factor would be met, however, if, as required under Regulation 18950.1(e), the travel is for purposes approved by the government employer under the same requirements applicable to travel using its own funds, and the official is representing his or her governmental employer in the course and scope of his official duties. If the travel was approved under the same standards that the government employer uses in using its own funds, this provision applies. Additionally, Regulation 18950.1(e) also states that the travel expenses must be limited to no more than the expenses allowable for travel for agency business that the agency would reasonably pay. If this factor is also met, than subsection (4) applies.

(5) The duration of the travel is limited to that necessary to accomplish the purposes for which the travel was provided as determined by the governmental employer using the same standards imposed for travel paid with government funds.

Based on your facts, we assume that this factor is met because other than the travel days, you have stated that in the seven days of travel, there will be 59 meetings.

(6) The government employer reports the payment as provided in Regulation 18950.1(f).<sup>5</sup>

This factor will be met provided the City reports the payments on the Form 801.

(Regulation 18950.1(a).)

The regulation lists circumstances under which the payments are used for official agency business. (Regulation 18950.1(b).) While the type of visit you are planning to China to develop a sister city relationship and encourage commercial relations is not specifically listed in the description of what qualifies as “official agency business,” it is nevertheless of the same kind of purpose as those listed. Given that the City would pay<sup>6</sup> for you, as the Economic Development

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<sup>5</sup> Such payments for travel are reported on the Form 801, and can be found here: <http://www.fppc.ca.gov/forms/801.pdf>.

<sup>6</sup> The City of Watsonville has stated that it is willing to reimburse CCMT for the transportation and other costs if necessary.

Manager, as well as the city council member, to attend the development meetings in China, it stands to reason that the City also views this as “official agency business.” Provided the other restrictions of this exception are met (see enclosed copy of Regulation 18950.1 for further information), the payments for travel provided by CCMT for City of Watsonville employees or councilmembers are neither a gift nor income under the Act. Watsonville must, however, report the payments on the Form 801.

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Heather M. Rowan  
Senior Counsel, Legal Division

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