



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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September 18, 2015

John Waddell
County of San Luis Obispo
Department of Public Works
County Government Center, Room 206
San Luis Obispo, CA 93408

Re: Your Request for Advice
Our File No. A-15-176

Dear Mr. Waddell:

This letter responds to your request for advice regarding the gift and conflict of interest provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions in the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

FACTS

You work as a project manager in the County of San Luis Obispo Public Works Department. In your position, you are required by County or department policy to complete a Form 700 annually.

In connection with a project that you manage, the County has contracted with an engineering firm, EADOC, for consulting services. EADOC’s parent company, Bentley Systems, is holding an annual infrastructure development conference in London. As part of this conference, they have an award to recognize outstanding infrastructure projects. Bentley System’s website states:

“Enter your project for the 2015 Be Inspired Awards for a chance to win a trip to London to present your work to your peers and members of the press at the *Year in Infrastructure 2015 Conference!*”

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.

“The annual Be Inspired Awards competition, part of The Year in Infrastructure 2015 Conference, brings together infrastructure professionals and members of the media from around the globe to:

“✓ Share innovative practices in infrastructure project design, engineering, construction, and operations,

“✓ Celebrate the extraordinary work of the world’s architects, engineers, contractors and owner-operators,

“Since 2004 the Be Inspired Awards program has recognized more than 2,000 of the world’s most outstanding infrastructure projects. The program, open to all users of Bentley software, is a unique competition – the only of its kind that is global in scope and comprehensive in categories covered, encompassing all types of infrastructure projects.”

The website sets up the competition process is as followings:

“NOMINEE: Nominate your project and receive a complimentary registration for the *Year in Infrastructure 2015 Conference in London*, as well as a certificate of participation. Each nominee is recognized in the *Infrastructure Yearbook 2015*, which is the just the beginning of how your project can be promoted to a global audience through Bentley’s marketing and public relations activities.

“FINALIST: As a finalist, a member of your organization wins a trip to London to present your project at the Year in Infrastructure 2015 Conference before the jurors, peers, and key members of the press. A second member of your organization will receive a complimentary registration for the event. All the finalists are honored at the highly anticipated Be Inspired Awards ceremony.

“After the event, your project presentation can be shared on Bentley.com, and you’ll also receive the presentation recording. Your project will also be showcased in Bentley’s *Be Inspired Project Portfolios*.

“WINNER: Be Inspired winners receive all the rewards of nominees and finalists and in addition, winners receive a \$1,000 charitable donation in their organization’s name and are featured in a special advertising insert in ENR. If a trip to London and global recognition aren’t enough, you also win a Be Inspired Awards trophy, a Be Inspired Awards poster featuring the winning project and a framed photo of your organization’s representative accepting the award!”

According to the *Finalist Travel Guidelines*:

- “Bentley Systems will cover the costs associated with airfare to and from London, ground transportation to and from the conference hotel and accommodation at the hotel for one (1) person.”
- Bentley will book the hotel reservations for sponsored conference attendees. The Conference Hotel is the Hilton London Metropole Hotel for the dates November 2 to November 6. Bentley will only pay for the hotel room and tax charges (for a maximum of four nights).
- Only flights to and from Heathrow Airport will be paid for by Bentley – additional stops will not be covered by Bentley Systems. Any stopovers or trip extensions resulting in additional expenses are the responsibility of the traveler.
- Bentley Systems will reimburse for transportation to and from the Hilton London Metropole Hotel via the Heathrow Express.

QUESTIONS, CONCLUSIONS AND ANALYSIS

1. Would acceptance of the free travel create a conflict of interest, since the travel payments would be made by a company associated with a County service provider?

Yes. Gifts of travel can be a basis for conflict of interest if worth \$460 or more received or promised during the 12 months before a decision that materially affects the source. Income is also a basis for a conflict of interest if it is \$500 or more received or promised during the 12 months before a decision that materially affects the source. (Section 87103.) Both income and gifts are reportable but income is not subject to a limit. Gifts are subject to a \$460 limit per year per source.

However, Regulation 18942(a) provides that “the following payments that otherwise meet the definition of gift as provided in Section 82028, subdivision (a) are neither gifts nor income . . . (14) A prize or award received in a manner not related to the official’s status in a bona fide contest, competition, or game of chance. A prize or award that is not reported as a gift shall be reported as income . . .” Thus, the payments in question would be considered income, not gifts. Therefore, absent an additional exception (see discussion below), the payment for travel would create a conflict of interest with respect to decisions that affect the source materially.

2. Would the payments be exempt under Regulation 18950.1 “Exception: Payments for Travel Made in Conjunction with Official Agency Business”?

For Regulation 18950.1 to apply, the following requirements must be met:

“(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.”

Regulation 18950.1(b) clarifies that the payment be made directly to the government employer or by arranging with the government employer, any payments for transportation and lodging that are made directly to the provider of those services. Your facts indicate that Bentley will be working with County staff in arranging attendance of the County representative to present the County project at the conference.

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

Regulation 18950.1(c)(4) provides (as pertinent to your question) that where a payment is made for (1) the travel expenses of an official to an educational conference (2) directly related to the governmental employer’s functions or duties under the laws that it administers, (3) the official is a named presenter at the conference, and (4) the payment is made by the organizers of the event, the payment is considered to be for an agency purpose. The payment in this case is being made by the organizers of an educational conference, and will involve a presentation of a county project at the event. Thus, the payments would be for an official agency purpose.²

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

Subdivision (d) clarifies that if the payment is for expenses related to an oral presentation to either provide training on a subject on which the governmental employer provides training, or discuss policy and direction in implementing the functions of the governmental employer, the donor may request the official who is most qualified to make the presentation.

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

Subdivision (d) requires that travel expenses are limited to no more than the expenses allowable for travel for agency business that would reasonably be paid at agency expense. However, the regulation would not restrict a payment for any lodging or food if the lodging and food is provided at a site where the official attends a widely attended meeting or conference and the value is substantially equivalent in value to the lodging or food typically made available to the other attendees. (Regulation 18950.1(g).) Thus, the payments for food and lodging would fall under subdivision (g) and would be permissible if the payments meet all the requirements of the subdivision.

“(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.”

“(6) The government employer reports the payment as provided in Regulation 18950.1(f).”

² Note that your facts are unique and the same conclusion might not apply to other similar fact patterns regarding travel.

This factor will be met provided the County reports the payments on the Form 801. (Regulation 18950.1(a).) The payment (of any amount) must be reported on the 801 form and must be maintained by the County as a public record subject to inspection and copying under Section 81008(a) and signed by the authorizing official.

If the aggregated travel payments received by the County from all sources and for all purposes equals \$2,500 or more, the County must post a copy of the form or a summary of the information on the form on its website in a prominent fashion within 30 days after the end of a calendar quarter.

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

Sincerely,

Hyla P. Wagner
General Counsel

/S/John W. Wallace

By: John W. Wallace
Assistant General Counsel
Legal Division

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