FAIR POLITICAL PRACTICES COMMISSION
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August 22, 2011

Mr. James Sutton
o/b/o Supervisor Carmen Chu

REDACTED

Warning Letter Re: FPPC No. 11/081; Carmen Chu, David Chiu, and Eric Mar

Dear Mr. Sutton:

The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),[1] found in Government Code section 81000, et seq. This letter is in response to an investigation as to whether your client, City and County of San Francisco Supervisor Carmen Chu, violated the gift limit provisions of the Act.

The FPPC has completed its investigation into the facts of this case. Specifically, the FPPC found that on the Schedule E of the Statement of Economic Interests your client filed on or about March 12, 2010, covering calendar year 2009, she disclosed the receipt of a gift of travel, consisting of a trip to southern China from November 11, 2009 through November 16, 2009, from the Chinese New Year Festival Committee valued at $6,122. This gift was in excess of the 2009 gift limit imposed by the Act in Section 89503.

The Act places limitations on the acceptance of gifts by certain public officials. As an elected city supervisor, your client is prohibited from accepting gifts from any single source in any calendar year with a total value of more than the gift limit. (§ 89503(a).) The gift limit in 2009 was $420. (Regulation 18940.2.) Under specific circumstances, payments for transportation, lodging, and subsistence may be exempt from the definition of "gift." Section 89506(a)(2) 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 such as governmental agencies, bona fide public or private educational institutions, or non-profit 501(c)(3) organizations. It is a general rule of

[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.

statutory construction that exceptions are narrowly construed. (*Estate of Banerjee* (1978) 21 Cal.3d 527, 540.) Section 89506 is specific in that the only non-profits exempted are 501(c)(3) organizations, and gifts from any other type of non-profit entity are subject to the limitation.

In your client's interview with us in response to our inquiry regarding the gift, she stated that the Chinese New Year Festival Committee was the source of the travel, accommodations, and meals and that she believed the Chinese New Year Festival Committee was a 501(c)(3) organization. Although the Committee filed articles of incorporation with the State of California as a non-profit, with the primary purpose of organizing and operating the Chinese New Year parade; and is registered with the California Attorney General's Office as a charitable entity, the organization has never been registered as a 501(c)(3) organization. The Chinese New Year Festival Committee is a 501(c)(6) non-profit organization. Therefore, the requirements under Section 89506(a)(2) for an exception to the gift limit were not met and the travel payment was a reportable gift that was subject to gift limits.

Your client's actions violated the Act because she received a gift over the limit. However, because Supervisor Chu, and the other two supervisors who also attended the trip to China, appear to have reasonably believed, based on the surrounding circumstances, that the Chinese New Year Festival Committee met the standard for the exception in Section 89506(a)(2), we have decided to close this case. This letter serves as a written warning. The information in this matter will be retained and may be considered should an enforcement action become necessary based on newly discovered information or future conduct. Failure to comply with the provisions of the Act in the future will result in monetary penalties of up to $5,000 for each violation.

A warning letter is an FPPC case resolution without administrative prosecution or fine. However, the warning letter resolution does not provide you with the opportunity for a probable cause hearing or hearing before an Administrative Law Judge or the Fair Political Practices Commission. If you wish to avail yourself of these proceedings by requesting that your case proceed with prosecution rather than a warning, please notify us within ten (10) days from the date of this letter. Upon this notification, the FPPC will rescind this warning letter and proceed with administrative prosecution of this case. If we do not receive such notification, this warning letter will be posted on the FPPC's website ten (10) days from the date of this letter.

Please feel free to contact me with any questions you may have regarding this letter.

Sincerely,

REDACTED

Zachary W. Norton
Commission Counsel
Enforcement Division