

Fair Political Practices Commission

MEMORANDUM

To: Chair Ravel, Commissioners Eskovitz, Garrett, Montgomery, and Rotunda

From: Zackery P. Morazzini, General Counsel
Jack Woodside, Commission Counsel

Subject: Adoption of Proposed Amendment to Regulation 18640: Activity Expenses.

Date: July 2, 2012

Proposed Commission Action and Staff Recommendation

There are two regulations (18946.2(e) and 18640(b)) that address the valuation of an official's attendance at an invitation-only event where the official makes what is referred to as a "drop-in" visit. Regulation 18946.2(e) was recently amended and now provides a new valuation for such a "drop-in" visit. Staff subsequently realized that the valuation for the "drop-in" visit provision under Regulation 18640(b) needs to be similarly amended to ensure that the regulations place a consistent value on "drop-in" visits to invitation-only events. Accordingly, staff recommends that the Commission amend Regulation 18640(b) to provide the same valuation for a "drop-in" visit that currently exists under Regulation 18946.2.

Background and Current Law

In 2005, the Commission undertook to codify the rule concerning "drop-in" visits that had been recognized and applied in various advice letters. A memorandum to the Commission dated October 25, 2004, indicated that such codification would require amending Regulation 18946.2 and adding Regulation 18640:

Therefore, staff has provided proposed regulatory amendments that offer the Commission the opportunity to determine whether this rule should be codified, and made available to all events, or be eliminated altogether. The proposed regulatory amendments impact regulation 18946.2 and add regulation 18640 and raise the following issue: Should the Commission codify the "drop-in" exception enunciated in *Sutton and Reed*,¹ *supra* and make it an exception to the otherwise applicable valuation rules, or eliminate it altogether?

Thus, in 2005, the Commission added subdivision (e) to Regulation 18946.2, commonly known as the "drop-in" rule, where an official appears at an event but does not stay for the meal or entertainment. Under the rule as it existed at that time, the value of the gift received was the

¹ *Sutton* concerned an official's "drop-in" visit to a lobbyist employer sponsored event while *Reed* addressed the rule in a non-lobbyist employer context.

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actual value of any food and beverages consumed by the official and his or her guest, and the value of any specific item received at the event. The Commission simultaneously added Regulation 18640(b) to provide the same valuation for an official's "drop-in" visit to an invitation-only event sponsored by a lobbyist, lobbying firm or lobbyist employer.²

More recently, the Commission amended Regulation 18946.2, subdivision (e), providing that where only minimal appetizers and drinks are consumed, the value to the official is the value of any specific item, other than food, given to the official and his or her guest:

(e) Drop-In Visit. Except as provided in subdivision (f) of this regulation, if an official attends an invitation-only event and does not consume any meal or stay for any entertainment and consumes only minimal appetizers and drinks, the value of the gift received is the value of any specific item, other than food, presented to the official and guest accompanying the official at the event.

The "drop-in" gift valuation contained in Regulation 18640(b), however, was not similarly amended to reflect this change, and it does not cross-reference Regulation 18946.2(e). Therefore, in order to provide consistent valuations for "drop-in" visits to invitation-only events, staff recommends that the Commission amend the lobbyist "drop-in" rule under Regulation 18640(b) so that it conforms to the current gift "drop-in" rule under Regulation 18946.2(e).

Attachments:

1 – Proposed Amendment to Regulation 18640

2 – Regulation 18946.2

² Both Regulations became operative on March 2, 2005.