



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

August 24, 2018

James R. Williams
Office of the County Counsel
County of Santa Clara
70 West Hedding Street, East Wing, 9th Floor
San Jose, CA 95110

Re: Your Request for Advice
Our File No. A-18-178

Dear Mr. Williams:

This letter responds to your request on behalf of Santa Clara County Supervisor S. Joseph Simitian for advice regarding the gift provisions of the Political Reform Act (the "Act").¹

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Are payments for airfare, ground transportation lodging and meals made to Supervisor Simitian from the American Israel Education Foundation ("AIEF") to attend a seminar in Israel subject to gift acceptance and reporting limits?

CONCLUSION

Payments made by AIEF for travel, lodging, and subsistence are reportable gifts that are not subject to the gift limits because they are reasonably related to a legislative or governmental purpose and/or concern international public policy and are provided by a 501(c)(3) organization. Any other payments will be reportable gifts subject to gift limits.

FACTS

Supervisor Simitian was invited to participate in an "Educational Seminar in Israel for Pacific Northwest Progressive Leaders" from December 8-16, 2018. The trip is sponsored by the

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.

AIEF, and the sponsorship covers the cost of airfare, ground transportation, and lodging and meals during the seminar. Participants of the program include elected officials and community leaders.

AIEF will not cover personal charges, such as telephone/Internet service, personal entertainment expenses, gifts, and activities not part of the formal program. During the trip, elected and appointed government officials will meet with Israeli government officials, Palestinian Authority representatives, academics, and journalists. The seminar will be related to the purpose of exploring policy and security issues affecting both the United States and Israel.

AIEF is a charitable organization affiliated with the American Israel Public Affairs Committee ("AIPAC") and that AIEF is organized as a non-profit 501(c)(3) tax exempt organization. Both AIEF and AIPAC are headquartered in Washington D.C.

AIEF's "Mission Statement" indicates that AIEF makes grants to support educational programs including Middle East research, educational materials and conferences, and leadership programs for university students. AIEF also funds educational seminars to Israel for members of Congress and other "political influentials." The Mission Statement explains the purpose of these seminars:

These AIEF-sponsored trips help educate political leaders and influentials about the importance of the U.S.-Israel relationship through firsthand experiences in Israel, briefings by experts on Middle East affairs, and meetings with Israeli political elite.

ANALYSIS

The Act's Gift Provisions:

A gift is defined under Section 82028(a) 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."

To reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

- **Gift Limit of \$470:** The Act places limitations on the acceptance of gifts by certain public officials. (Section 89503.) The current limit is \$470 from a single source in a calendar year. (Regulation 18940.2.)
- **Gift Reporting:** 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 of \$50 or more (or 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. (Section 87207 "Disclosure of Income" and see generally, Sections 87200 - 87314.)

- **Conflict of Interest Disqualification:** The Act prohibits any public official from making, participating in making, or using his or her official position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$470 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 and 87103(e).)

Gifts of Travel

Under the Act, travel is presumed to confer some personal benefit on a public official. Here, AIEF has invited Supervisor Simitian to attend the seminar and will cover the full cost of travel, including airfare, ground transportation, security, meals, and other subsistence items. These payments are a gift to Supervisor Simitian, subject to reporting and regulation under the Act.

Gifts of Travel -Exceptions to the Gift Limit

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 \$470 gift limit. In this regard, Section 89506(a) (in pertinent part) provides an exception to the gift limit for the following 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 applies:

* * *

"(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."

Where the seminar's purpose is to "help educate political leaders and influentials about the importance of the U.S.-Israel relationship through firsthand experiences in Israel, briefings by experts on Middle East affairs, and meetings with Israeli political elite," the travel is reasonably related to issues of national or international public policy. Additionally, the travel is provided by AIEF, a 501(c)(3) nonprofit organization.² Thus, we conclude that the value of the airfare, lodging,

² Please note that Regulation 18945(a) provides: "The person who makes the gift to the official(s) is the source of the gift unless that person is acting as an intermediary. The person is acting as an intermediary for the source of the

meals AIEF would provide to you to attend the seminar, are reportable gifts, that are *not subject to gift limits* pursuant to Section 89506(a)(2). Please note that payments made for items *other than* travel and related lodging and subsistence, such as expenses paid for entertainment purposes, will be considered reportable gifts subject to the \$470 gift limit.³

Conflict of Interest Disqualification

As discussed above, a public official who receives gift(s) of \$470 or more may have a financial conflict of interest under the Act. (Section 87100 *et seq.*) The official must disqualify himself or herself from voting or otherwise taking part in a governmental decision affecting that source if the payment was provided to, received by, or promised to the official within the 12 months preceding the decision.

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

Sincerely,

Brian G. Lau
Assistant General Counsel



By: Zachary W. Norton
Senior Counsel, Legal Division

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gift when the gift to the official was provided under any of the following conditions: (1) the person receives a payment from a source and the payment is made to the official after the source identifies the official as the intended recipient of the gift; (2) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be used for the sole or primary purpose of making a gift to an official; or (3) the person receives a payment from a source after the payment was solicited by the official or the official's agent for the purpose of making a gift to the official." We have no facts to suggest that AIEF is acting as an intermediary for the payments.

³ We note that we have issued advice letters to other officials in the past regarding similar AIEF sponsored educational seminars overseas. (See *Hueso* Advice Letter, No. A-17-219; *Flores* Advice Letter, No. A-17-197; *Peraza* Advice Letter No. A-16-116, and No. A-15-200; *Korb* Advice Letter No. A-15-105; *McMinn* Advice Letter No. A-14-171; *McMinn* Advice Letter A-14-171; *Bagneris* Advice Letter A-14-129; and *Pasquil* Advice Letter A-14-068.)