



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 07, 2021

Patrick Ford  
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San Francisco Ethics Commission  
25 Van Ness Avenue, STE 220  
San Francisco, CA 94102 6053

Re: Your Request for Advice  
**Our File No. I-21-123**

Dear Mr. Ford:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).<sup>1</sup> 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. Because your question is general in nature, we are treating your inquiry as a request for informal assistance.<sup>2</sup>

### QUESTIONS

1. If a department of the City of San Francisco (“City”) has a ticket policy in place, can that department disclose itself as the recipient of tickets that were distributed to its employees on the Agency Report of Ceremonial Role Events and Ticket/Pass Distributions Form 802 (“Form 802”) without naming individual employees and still have the exception to gift reporting under Regulation 18944.1 apply for those employees?
2. If a City department receives tickets from an outside source and has a ticket policy in place how would the distribution be reported on the Form 802 if that City department gives the tickets to a different City department that also has a ticket policy and how would gift laws apply to the individual employees receiving the tickets?
3. If a City department has a ticket policy in place and gives tickets to another City department that does not have a ticket policy in place can the first City department list the second City department as the recipient of the tickets? Can the second department accept the tickets and then

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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 18109 through 18998 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).)

distribute them to its employees without having to file a Form 802 and still have the Regulation 18944.1 exemption apply to its employees?

4. If a City department gives tickets to another City department to distribute and the first department reports the individual names of the second department's employees receiving the tickets on the Form 802, but the second department does not have a ticket policy and does not file a Form 802, would the tickets be considered a gift to each individual? Does the answer change depending on whether the tickets were given directly by the first department to the second department employees, or given by the first department to the second department and then distributed by the second department to its employees?

### **CONCLUSION**

1 – 4. A transfer of tickets between departments is not relevant to the Form 802 reporting requirements. The Form 802 reporting requirement is triggered by the official using the ticket, at which point the ticket must be reported pursuant to the ticket policy in place, whether city wide or departmental. If the tickets used by an official are provided by an outside source to the City or a department within the City, the outside source should be identified as the source in Part 2 of the Form 802. If an official who files a Statement of Economic Interests Form 700 (“Form 700”) uses a ticket received by the City, including any department, from an outside source and the official is not subject to a ticket policy, the ticket must be reported on the official's Form 700 as a gift from the outside source. If it is a ticket owned by the City, it can be reported as either a gift or income, but it is the official's burden to show that it is income.

### **FACTS AS PRESENTED BY REQUESTER**

You are the Senior Policy and Legislative Affairs Counsel for the San Francisco Ethics Commission (“Ethics Commission”). The Ethics Commission was established by the City voters in November 1993, and serves the public, City employees and officials, and local candidates through education and enforcement of governmental ethics laws, including public information, reports and advice; campaign disclosure and economic interest filings; lobbyist and campaign consultant registration and reporting; public financing for City campaigns; audits, investigations and enforcement.

The Ethics Commission is currently reviewing the City conflict of interest laws, including all laws pertaining to gifts. This includes laws that may affect the distribution of tickets by City departments to City officials and the use of the tickets by those officials. The City has never adopted a citywide ticket policy. Rather, a small number of individual City departments have adopted their own ticket policies. These individual departments post the Agency Report of Ceremonial Role Events and Ticket/Pass Distributions Form 802 (the “Form 802”) on their respective websites when distributing tickets pursuant to their established ticket policies. There are currently at least sixty departments of the City and County of San Francisco. The departments that have an established ticket policy are Recreation and Parks, Port, Arts Commission, Film Commission, War Memorial Board of Trustees, Asian Art Museum, Fine Arts Museums, and the Treasure Island Development Authority.

The Ethics Commission is reviewing City practices regarding the distribution of tickets to City officials and has several questions about how these City departments should be handling the

receipt and distribution of tickets to City officials. These issues are important to the Ethics Commission's ability to analyze existing state laws for the purpose of implementing local policies that address important ethics issues within the City. They are also important to the Ethics Commission's ability to enforce relevant provisions of the Act and related local laws.

## ANALYSIS

A "gift" means 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.) Public officials enumerated in Section 87200 and employees who are designated in an agency's conflict of interest code, as required by Section 87300, must disclose certain economic interests, including gifts on the employee's Statement of Economic Interests ("Form 700") when such gifts total \$50 or more in a calendar year from a single source. (Section 87207; Regulation 18940.) Additionally, unless an exception applies, gifts to public officials are limited to \$520 per year if the source is one the employee would have to report on their Form 700. (Regulation 18940.2.)

A ticket or pass provided to an official by their agency is not a gift under the Act if certain criteria are met. (Regulation 18944.1.) If an employee is not enumerated in Section 87200 or designated in their agency's conflict of interest code, they are not subject to gift reporting and are not limited by the Act in the gifts they may receive.

If an agency adopts a ticket policy and follows the procedures outlined in Regulation 18944.1, officials within that agency that would normally need to report the receipt of a ticket distributed to them by the agency as a gift are not required to do so. Regulation 18944.1(a) sets forth the criteria for when a ticket provided by an official's agency is not a reportable gift under the Act. The relevant criteria are as follows:

- The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency that incorporates all of the provisions of subdivision (b) and is maintained as a public record as required in subdivision (c).
- The distribution of the ticket or pass is reported pursuant to subdivision (d).
- The ticket or pass is not earmarked by an outside source for use by a specific agency official.
- The agency determines, in its sole discretion, who uses the ticket or pass.

(Regulation 18944.1(a)(1)-(4).)

If an agency is distributing tickets in accordance with an adopted ticket policy, Regulation 18944.1(d) provides that the distribution must be reported on the Form 802 within 45 days of distribution of a ticket or pass. The information reported must include the following:

- The name of the official receiving the ticket or pass.
- A description of the event.
- The date of the event.
- The fair value of the ticket or pass.
- The number of tickets or passes provided to each person.

- If the ticket or pass is behested, the name of the official who behested the ticket.
- If the ticket was transferred to an immediate family member or guest, the relationship of the transferee.
- A description of the public purpose under which the distribution was made.
- A written inspection report of findings and recommendations by the official receiving the ticket or pass if received for the oversight or inspection of facilities.

(Regulation 18944.1(d)(1).)

Regulation 18944.1(d)(2) provides that “[i]f the ticket or pass is distributed to a department or other unit of the agency, and not used by a member of the governing body, the chief administrative officer of the agency, political appointee, or department head, the agency may report the name of the department or other unit of the agency receiving the ticket or pass and the number of tickets or passes provided to the department or unit in lieu of reporting the name of the individual employee as otherwise required in subdivision (d)(1).”

The purpose of adopting Regulation 18944.1 was to create an exemption from the definition of “gift” for certain payments made to accomplish a public purpose. (*Barazato* Advice Letter, No. I-18-125.) If the procedure in Regulation 18944.1 is followed, the exemption will apply. If the procedure is not followed, the exemption will not apply, and the item will be considered a reportable gift to those officials who would normally have to report the gift on their Form 700. The provisions of Regulation 18944.1 are available to all those who have filing obligations under the Act. This includes both statutory filers under Section 87200 and those agency “designated employees” who file pursuant to an agency conflict of interest code. (*Scott* Advice Letter, No. I-09-104.) As noted above, if the employee receiving the ticket is not a designated employee or in a decision-making capacity and not required to file a Form 700, the employee is not required to report the gift or subject to the gift limit and is not required to be listed on the Form 802. (*Barazato* Advice Letter, No. I-18-125.)

In the scenarios you presented above, we conclude that the Form 802 reporting requirement is triggered by the official using the ticket, at which point the ticket must be reported pursuant to the ticket policy in place, whether it is a policy in place by the City or the individual department. Thus, if an official received tickets from the City or a department within the City, the City would file a Form 802 report identifying the recipients of the tickets. A transfer of tickets between departments within an agency is not relevant to the Form 802 reporting requirements.

If the tickets used by an official are provided by an outside source to the City or a department within the City, the outside source should be identified as the source in Part 2 of the Form 802.

If an official subject to Form 700 reporting uses a ticket received by the City, including any department, from an outside source and the official is not subject to a ticket policy, the ticket must be reported on the official’s Form 700 as a gift from the outside source. If it is a ticket owned by the City, it can be reported as either a gift or income, but it is the official’s burden to show that it is income.

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

Sincerely,

Dave Bainbridge  
General Counsel

*Katelyn L. Greene*

By: Katelyn L. Greene  
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KG:dkv