



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811

May 24, 2019

Benjamin Harvey
City Manager, City of Pacific Grove
Via email at: citymanager@cityofpacificgrove.org

Re: Advisory Letter – In the Matter of Benjamin Harvey; FPPC No. 2019-00225

Dear Mr. Harvey:

The Fair Political Practices Commission enforces the provisions of the Political Reform Act (the “Act”)¹. The Commission’s Enforcement Division received a sworn complaint alleging that you failed to disclose a gift of a discounted airfare membership on your Statements of Economic Interests (“SEI”). The Enforcement Division has completed its review of the matter and has decided to close its file on this matter without prosecution. The basis for this decision follows.

The Enforcement Division found that you were appointed to Interim City Manager of Pacific Grove on January 20, 2016. You were permanently appointed to the position of City Manager of Pacific Grove on April 20, 2016. During this time, you were approached by Mr. Jared Ficker, a subcontractor of Domaine Hospitality, to join his group membership with Surf Air, an air travel club.

Surf Air is available to the public and offers both group and individual memberships. However, in this case, you were offered to join Mr. Ficker’s preexisting group plan, which on average comprised of five people. The monthly membership fee for Surf Air with Mr. Ficker’s group plan was \$1,425/month. The alleged gift is centered on the fact that this membership was priced at a lower rate obtained previously that is no longer offered by the company and that others would not be able to receive that rate.

Under the Act, “gift” means, with a few exceptions, any payment that confers a *personal benefit* on the recipient to the extent that consideration of equal or greater value is not received. This would include a rebate or a 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.² A rebate or discount is not “made in the regular course of business to members of the public without regard to official status” if the rebate or discount is made solely to the official or to a select group of specific officials, such as one agency or one department or unit within an agency. (Regulation 18940.1(e).) Here, the rebate is provided to everyone in the group, with you being the only public official in that group.

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code.

² Section 82028 subdivision (a)

Generally, gifts are to be valued at fair market value.³ Regulation 18946.1 is used to value the *benefit* received by a public official. The terms of your employment contract, City of Pacific Grove City Manager Employment Agreement, included a benefit to you where the City agreed to pay a housing/transportation reimbursement in the sum not to exceed \$3,000 per month. Since the city reimbursed the costs of your travel (e.g., the \$1,000 initiation fee to join SurfAir and the monthly membership cost was recouped under the agreement), and this was guaranteed by your contract with the City of Pacific Grove, the personal benefit of any discount to you was negligible.

In addition, since you were the only public official offered admittance into the group membership plan, the monthly membership fee was the same as other patrons in the group plan, and you provided information that you have a longstanding personal friendship with Mr. Ficker, we have insufficient evidence to establish that the discount was solely made to you in response to your official status. We found that you did not receive a disproportionate discount/rebate compared to the other recipients of the group membership. Therefore, we cannot conclude that the membership to Surf Air either conferred a personal benefit to you or that the access to this private group membership was given with regard to your official status. If the circumstances arise again in the future, we would advise you to request advice from the Commission's Legal Division. Please note that a formal advice letter can provide the requestor immunity from enforcement actions by the Commission.

If you have any questions regarding this letter, please contact Chloe Hackert at chackert@fppc.ca.gov or (916) 322-8190.

Sincerely,



Galena West, Chief
Enforcement Division

cc: Jane Haines, sworn complainant (via email at: [REDACTED])

³ Section 82025.5