



FAIR POLITICAL PRACTICES COMMISSION

1102 Q Street • Suite 3050 • Sacramento, CA 95811

Michael Columbo
On behalf of Carmen Montano
Via email: MColumbo@dhillonlaw.com

Rodrigo Espinosa
Via email: Rodrigo.Espinosa@countyofmerced.com

February 5, 2024

Re: Warning Letter: FPPC No. 2022-00733, In the Matter of Carmen Montano and Rodrigo Espinosa

Dear Carmen Montano and Rodrigo Espinosa,

The Enforcement Division of the Fair Political Practices Commission (“FPPC”) enforces the provisions of the Political Reform Act (the “Act”).¹ The Enforcement Division received a sworn complaint and an anonymous complaint alleging that Carmen Montano, in their capacity as a member of the Milpitas City Council, accepted a gift over the limit. Additionally, the complaint included an allegation that Montano’s Statement of Economic Interest (“SEI”) was inaccurate or misleading. The Enforcement Division has completed its investigation and found that the complaint regarding Montano’s reporting of a business was unfounded. However, Montano and another public official, Rodrigo Espinosa, reported a gift from William Zhen Wang. The investigation determined that this gift was at least \$3,100 over the annual gift limit. By accepting this gift, both violated the Act’s gift limit.

Under the Act, an elected officer of a local government agency – such as a member of the City Council or member of a County Board of Supervisors – shall not accept gifts from any single source in any calendar year with a total value of more than the gift limit in place at the time.² In 2019, the annual gift limit was \$500.³ A gift is defined as any payment that confers a personal benefit to the recipient to the extent that consideration of equal or greater value is not received.⁴

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18104 through 18998 of Title 2 of the California Code of Regulations.

² Section 89503.

³ Regulation 18940.2, as amended on December 12, 2018, operative January 11, 2019.

⁴ Section 82028.

There are some exceptions to the gift limit. One such exception is when the official receives an eligible gift of travel. For example, a gift of travel is not subject to the gift limit when the travel is in connection with a speech given by the official and when the gift covers only the day immediately preceding, the day of, and the day immediately following the speech, and when the travel is within the United States. Additionally, a gift of travel is not subject to the gift limit when the travel is provided by a government, a bona fide public or private educational institution, a 501(c)3 nonprofit or a non-US charitable organization that substantially satisfies the requirements for tax-exempt status under Section 501(c)3 of the Internal Revenue Code. In both cases, the gift of travel would be reportable but is not subject to the gift limit.

Here, both Montano and Espinosa are public officials with an obligation to regularly file SEIs. Montano is a member of the City Council for the City of Milpitas. Espinosa is a member of the Merced County Board of Supervisors. Both officials reported a gift of \$3,600 on their 2019 Annual SEI. The source of the gift was reported as William Wang, also known as William Zhen Wang. On Espinosa's SEI, the description included "provided airfare, accommodations and food for China trip." The travel took place outside of the United States and the gift of travel covered expenses for more than three days. Therefore, the first exception for a gift of travel does not apply. The gift was not paid for by a charitable organization, a foreign government, or a qualifying educational institution. Therefore, the second exception for a gift of travel does not apply.

In this way, Montano and Espinosa accepted a gift over the limit, violating the Act. However, the Enforcement Division has decided to close this case with a warning letter rather than a fine because there is some mitigation. The gift of travel was related to a delegation of officials from a group called, "Water for Elected Latino Leaders" to travel to China for cultural and educational exchange. There is no evidence that William Wang had business before either Milpitas or Merced County. The trip appears to have been a cultural and trade exchange, where officials represented their home jurisdiction and toured businesses, industries, schools, and more, as delegates. In further mitigation, the gift was reported and Montano provided evidence that she partially paid down the gift. Based on the foregoing, and in accordance with the Enforcement Division Policy Directives formally adopted by the Commission on January 26, 2023, which requires the Enforcement Division to take all appropriate actions within their discretion to decrease the Division's annual carryover caseload, the Enforcement Division is closing this case with this warning letter.⁵ Discretion was used based upon mitigating or aggravating circumstances and the totality of the circumstances.⁶ This resolution may not be used as a comparable case for other enforcement matters.⁷

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.

⁵ <https://www.fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/General%20Items/2023/january/15.0-Enforcement-directives.pdf>

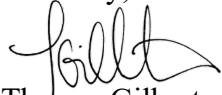
⁶ Regulations 18360.1 and 18360.3.

⁷ See Regulation 18361.5, subdivision (e)(3).

A warning letter is an Enforcement Division case resolution without administrative prosecution or fine. The Commission has adopted Regulation 18360.1 to authorize the Enforcement Division to issue warning letters to conclude cases in specified circumstances. 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 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 Enforcement Division 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 Commission's website ten (10) days from the date of this letter.

Should you have any questions regarding this letter, please feel free to contact me at (279) 237-5960 or Tgilbertson@fppc.ca.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Gilbertson', written over the printed name.

Theresa Gilbertson
Senior Commission Counsel
Enforcement Division

CC: Sworn Complainant, Christopher Martin