

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

December 27, 1976

Mr. Peter G. Stone  
City Attorney, San Jose  
151 West Mission Street  
San Jose, California 95110

Dear Mr. Stone:

You seek advice with respect to two situations as follow:

1. A member of the City Council of the City of San Jose was to testify before a committee of the State Legislature as a representative of the City of San Jose, authorized to appear before that committee by the City Council. The subject of the testimony was a bill being considered by the Legislature which would directly affect the revenues of the City of San Jose. It develops that because of the fact that there are so few flights between San Jose and Sacramento and the fact that the Councilmember has a busy schedule, the only way that he can testify is by flying in a private non-commercial airplane. If this flight was arranged by a private person who owned the plane, would the Councilmember be required to report this plane ride as a gift in his annual statement filed pursuant to Article 2 of Chapter 7 of the Political Reform Act?
2. As City Attorney, I am required to appear before the State Supreme Court representing the City of San Jose in litigation to which the City is a party. Because of my schedule, I will be in Southern California just prior to my appearance and the only means of transportation which will get me to the court on time is a private airplane. My friend owns such a plane and offers to fly me to San Francisco so that I can be on time for my court appearance. If I accept this offer, do I need to report this ride as a gift to me under Article 3 of Chapter 7 of the Political Reform Act, assuming that the Conflict of Interest Code for my department defines gift in the same manner as that term is defined in the Political Reform Act?

The Political Reform Act, at Government Code §82028, defines "gift" as "... any payment to the extent that consideration of equal or greater value is not received". (Emphasis added.) The term "payment" is defined as follows:

"Payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

Government Code §82044

The Act requires that public officials disclose income, including gifts of \$25 or more in value, on Statements of Economic Interests. (See Government Code §§87207(a)(1), (4), and 87302(b).) Thus, personal donative use of a private aircraft by a local official would constitute a gift to the official within the meaning of §82028, supra., and such a gift, if valued at \$25 or more, would be reportable pursuant to Government Code §87207 or a Conflict of Interest Code adopted pursuant to Government Code §87300, et seq.

The facts as you relate them pose the issue of whether, under the Political Reform Act, the donation of the use of the aircraft is made to the City or to the official using the aircraft. Only gifts made to the official are reportable.

You related in telephone conversations subsequent to the submission of your request for advice that the use of the aircraft in situations 1 and 2, above, was available from "friends of the City" to appropriate City officials who have an official need to utilize the aircraft as offered. You indicated that the use of the aircraft was not generally available to City officials but was restricted to certain high ranking officials, not limited to those mentioned in your request for advice. The arrangements outlined above are not formalized, but rather are generalized rules of conduct growing out of the ad hoc use or discussed use of the aircraft.

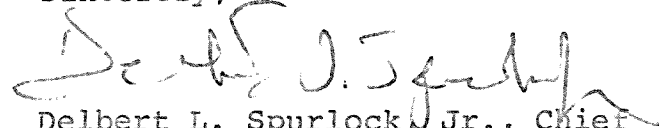
It is clear that the officials in question receive significant personal benefit from the service offered by the "friends of the City" -- certainly in time and aggregation savings, but, perhaps also, in direct financial benefits. Such benefits might accrue to the official even if it is certain that the donation was made to the City and not to the official.

But, where as here, the official is a recipient of the beneficial service, the policy of the Political Reform Act requires that the official demonstrate that he or she is not the donee of the service, in order to avoid the reporting requirements of the Act. Under the arrangement related above, no such demonstration has been made. 1/

Thus, the officials in question must report the use of the aircraft from the "friends of the City" as gifts on appropriate Statements of Economic Interests at the fair market value of the service. 2/

If you disagree with, or have questions regarding, this advice, please feel free to call me at 916/322-6444.

Sincerely,

  
Delbert L. Spurlock, Jr., Chief  
Conflicts of Interest Division

DLS:glb

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1/While staff advice may not be definitive regarding the standards for demonstrating the difference between donations to the City and donations to the official, at minimum there probably must be a showing that:

- (1) The donor intended to donate the service to the City and not to the official;
- (2) The City exercised the significant decisions regarding the use of the service;
- (3) The service was generally available to City personnel on City business without regard to official status; and
- (4) The use of the service was formalized in writing or by record which embodied the standards set forth above.

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(continued)

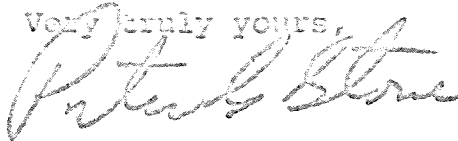
2/Under a Conflict of Interest Code gifts are reportable only if income is reportable. Income should never be reportable on the initial statement of designated officials pursuant to a Conflict of Interest Code.



August 25, 1976

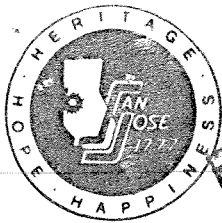
I would appreciate any assistance you can provide with respect to clarification of any reporting requirements with respect to the foregoing questions.

Very truly yours,



PETER G. STONE,  
City Attorney

PGS:DML:se



CITY OF SAN JOSE, CALIFORNIA

151 W. MISSION STREET  
SAN JOSE, CALIFORNIA 95110  
(408) 777-4458

PETER G. STONE  
CITY ATTORNEY

November 18, 1976

Fair Political Practices Commission  
1100 K Street  
Sacramento, California 95814

ATTENTION: Technical Assistance and Analysis Division

SUBJECT: Request for Advice


Dear Gentlepersons:

In a letter dated August 25, 1976 I requested your advice with respect to reporting certain matters under Chapter 7 or other applicable provisions of the Political Reform Act of 1974. I am attaching a copy of that letter.

I have not yet received a response to my request for advice on this matter.

Please let me know if there is anything I can do or any additional information you require in order to expedite a response to my letter.

Very truly yours,

  
PETER G. STONE  
City Attorney

PGS:DML:jb  
Attachment



August 25, 1976

Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95814

Attention: Technical Assistance and Analysis Division

Subject: Request for Advice

Dear Gentlepersons:

I would like your advice on whether reporting under Chapter 7 or any other provisions of the Political Reform Act of 1974 will be necessary under the following specific circumstances:

1. A member of the City Council of the City of San Jose was to testify before a committee of the State Legislature as a representative of the City of San Jose, authorized to appear before that committee by the City Council. The subject of the testimony was a bill being considered by the legislature which would directly affect the revenues of the City of San Jose. It develops that because of the fact that there are so few flights between San Jose and Sacramento and the fact that the Councilmember has a busy schedule, the only way that they can testify is by flying in a private non-commercial airplane. If this flight was arranged by a private person who owned the plane, would the Councilmember be required to report this plane ride as a gift in their annual statement filed pursuant to Article 2 of Chapter 7 of the Political Reform Act?

2. As City Attorney, I am required to appear before the State Supreme Court representing the City of San Jose in litigation to which the City is a party. Because of my schedule, I will be in Southern California just prior to my appearance and the only means of transportation which will get me to the court on time is a private airplane. My friend owns such a plane and offers to fly me to San Francisco so that I can be on time for my court appearance. If I accept this offer, do I need to report this ride as a gift to me under Article 3 of Chapter 7 of the Political Reform Act, assuming that the Conflict of Interest Code for my department defines gift in the same manner as that term is defined in the Political Reform Act?

I would appreciate any assistance you can provide with respect to clarification of any reporting requirements with respect to the foregoing questions.

Very truly yours,

/s/

PETER G. STONE,  
City Attorney

PGS:HML:se



# CITY OF SAN JOSE, CALIFORNIA

151 W. MISSION STREET  
SAN JOSE, CALIFORNIA 95110  
(408) 277-4000

CITY ATTORNEY

August 25, 1976

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F P C

Fair Political Practices Commission  
1100 K Street  
Sacramento, CA 95814

Attention: Technical Assistance and Analysis Division

Subject: Request for Advice

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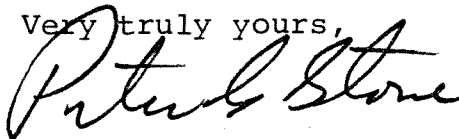
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I would appreciate any assistance you can provide with respect to clarification of any reporting requirements with respect to the foregoing questions.

Very truly yours,

A handwritten signature in cursive script that reads "Peter G. Stone". The signature is written in black ink and is positioned above the typed name.

PETER G. STONE,  
City Attorney

PGS:DML:se