



FAIR POLITICAL PRACTICES COMMISSION

P.O. Box 807 • 428 J Street • Sacramento, CA 95812-0807
(916) 322-5660 • Fax (916) 322-0886

September 3, 1998

Leslie J. Girard
Assistant City Attorney
City of San Diego
1200 Third Avenue, Suite 1620
San Diego, California 92101-4199

**Re: Your Request for Advice
Our File No. A-98-170a**

Dear Mr. Girard:

This letter is in response to your request for advice regarding the gift limit provisions of the Political Reform Act (the "Act").¹

At its meeting on September 3, 1998, the Fair Political Practices Commission ("Commission") decided to delete language in the last paragraph of our previous letter to you. This letter reflects that change.

Please keep in mind that nothing in this letter should be construed to evaluate any conduct that has already taken place. The Commission does not provide advice regarding past conduct. (Regulation 18329(b)(8)(A).)

QUESTION

Does the receipt of free food and beverages by city officials who use the city box at Qualcomm Stadium constitute a reportable gift to the city officials?

CONCLUSION

Yes, the food and beverages constitute gifts to the city officials. A city official who receives the food and beverages must disclose the gifts on their statements of economic interests

¹ Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

if the cumulative value of the gifts to the official totals \$50 or more. The aggregate value of the payments to the official may not exceed \$290 per calendar year.

FACTS

San Diego's Qualcomm Stadium was built in the mid-1960's by the city pursuant to a joint powers agreement with the county. The agreement created a joint powers authority, the San Diego Stadium Authority, which financed the construction of the stadium. The Authority ceased to exist on January 15, 1998.

The Director's Area ("city box") was originally established in the various agreements for the use of the stadium between the city and its tenants. The use of the city box is governed by a city council resolution, Council Policy No. 700-22, which was first adopted in 1967 and has been amended from time to time over the years. The various tenant agreements provide that the use of the box is reserved for public purposes consistent with the joint powers agreement and Council Policy No. 700-22 and is not under the control of the tenants during games or other events.

Council Policy No. 700-22 establishes guidelines for admission of city officials and their guests to the city box and provides, in pertinent part, as follows:

"The Director's Area was developed for use by credential holders and their guests, and to provide access to the Stadium for persons who can aid the improvement and promotion of the City and County of San Diego. Specifically, the following officials, during their terms of office will be entitled to use the Director's Area: Mayor and Councilmembers of the City of San Diego (9); Qualcomm Stadium Advisory Board (9); City Attorney (1); City Manager (1); Credential Pool (6).

"Each credential holder shall have access to: (A) reserved parking for one car, and (B) two seats in the Director's Area. Each credential holder will be issued two (2) tickets to the Directors' "F" Box for each scheduled National Football League and collegiate football game and to the Directors' "B" Box for each scheduled National League Baseball game. Tickets will provide entry to the Stadium at any gate and access to the appropriate Director's Area. Any tickets not being utilized by a credential holder for a specific game date should be made available to other credential holders for special civic guests, such as Flag Officers, Members of Congress, State Senators, Members of the State Assembly and other guests. Guests include volunteers and civic and community leaders who perform exceptional service to the City and City employees who

are outstanding performers. A Guest Book will be maintained in the Director's Box for all guests entering to sign and list their group affiliation”

The policy remains essentially the same as when adopted—the city boxes are provided for the use of persons who can aid the improvement and promotion of the city and county (e.g., the credential holders and their guests). Parking at the stadium in connection with the use of the box is reserved to the city through its contract with Ace Parking for the operation of the parking facility, and through the council policy.

Two private citizens have made complaints regarding the provision of free food and beverages in the city box. In response to the complaints, your office issued a report on February 2, 1998, which, among other things, concluded that the provision of free food and beverages in the city box does not violate any law, and does not create a reportable financial interest for officials who use the box. The city wants to ensure that the provision of free food and beverages in the city box does not violate the Act. Toward that end, the city is taking steps to memorialize the free food and beverages as a gift to the city.

Specifically, your office has requested the concessionaire at Qualcomm Stadium, Service America Corporation, to write to the city manager indicating that it is making a gift to the city of the free food and beverages, which will be available to whomever is authorized to use the city box. Since the city manager is authorized to receive gifts on behalf of the city, the city is proposing to require the city manager to execute a written acceptance of the gift from Service America, indicating that it will be used consistent with Council Policy No. 700-22. The offer of the gift and the acceptance by the city manager will be placed on file with the city clerk.

The city's contractual relationship with Service America and its predecessors for concession services at the stadium dates as far back as the stadium itself. It is unknown when Service America's practice of providing free food and beverages began, as it is not directly provided for in any of the city's agreements with Service America. Former city officials consulted seemed to recall that the practice began in the early 1980's.

ANALYSIS

Gifts - Generally

The Act imposes different obligations on public officials regarding the receipt of gifts. First, section 89503 provides a gift limit for local elected officials. Second, the Act requires that every public official disclose all his or her economic interests that could foreseeably be affected by the exercise of the official's duties. (Section 81002(c), 87207.) Finally, section 87100 requires that public officials disqualify themselves from any governmental decision that will

have a foreseeable and material financial effect on a donor of gifts aggregating \$290 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(e).)

Gift Limit

Section 89503 provides that no local elected officer or designated employee may accept gifts from any single source in any calendar year in excess of the gift limit if the official is required to report the receipt of gifts from that source on his or her statement of economic interests. The current gift limit is \$290. (Regulation 18940.2.) Presumably, every city official who is authorized to use the city box has full disclosure regarding the receipt of gifts.² (Sections 87200, 87202-87203, 87300, 87302.) Accordingly, every city official who is authorized to use the city box may not accept any gift worth more than \$290 in any calendar year from any source.

Section 82028(a) defines a “gift” 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”

The term “payment” as used above is defined as a “distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.” (Section 82044.) The Commission has consistently advised that a payment made to an elected officer for his or her food is a gift, unless a specific exception applies. (Regulation 18941.1.)

Gifts to the City

Under certain circumstances a payment of food may be considered a gift to an official’s agency, rather than to the official who receives the payment. The Commission has promulgated two regulations which indicate when a gift used by an official will be considered a gift to the official’s agency. (Regulations 18944.1, 18944.2.)

² An official with full disclosure must disclose, on his or her statement of economic interests, the name and address of every person who is a source of a gift of more than \$50 during the previous 12 months. (Section 87202(a)(1), 87302(b).)

The Exception in Regulation 18944.1 Does Not Apply

Regulation 18944.1 provides, in pertinent part:

“Passes or tickets which provide admission or access to facilities, goods or services, or other tangible or intangible benefits (including passes to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places or events, but not including travel or lodging), which are provided to an official are not gifts to the official whenever (a), (b), (c), (d), or (e) applies:

* * *

“(c) The tickets or passes are provided to the agency as part of the contract for the use of the facility and the distribution and use of the passes or tickets are regulated by an officially adopted policy of the agency.” (Regulation 18944.1(c).)

Regulation 18944.1(c) codifies the Commission’s advice to John W. Witt, City Attorney for San Diego. (*Witt* Advice Letter, No. A-79-211.) It was the Commission’s position that under the circumstances in San Diego, the free admission to the city box was a perk of office and, therefore, constituted part of the compensation the officials received from the city. The city had retained possession and control of certain seats in the stadium, which were utilized by city officials pursuant to an officially adopted policy of the city. As such, the use of the privilege was neither reportable as a gift nor the basis for disqualification. Accordingly, under regulation 18944.1(c), the benefit city officials receive from free admission to the city box is properly characterized as compensation from the city rather than a gift. (*See also Bernson* Advice Letter, No. A-82-211; *Delventhal* Advice Letter, No. A-83-123.)

You would like to know whether regulation 18944.1(c) would apply to the provision of free food and beverages in the city box. We conclude that the regulation would not apply. First, the tickets provided to the city do not include any food or beverages. Normally the “goods or services, or other tangible or intangible benefits” provided by a ticket to a football or baseball game is admission to the stadium and access to a reserved seat. The city council’s policy recognizes this and the express words of the policy specifically provide that “tickets will provide entry to the Stadium at any gate and access to the appropriate Director’s Area.” Second, the food and beverages are not provided to the city “as part of the contract for use of the facility.” Neither the contracts authorizing the use of the stadium nor the city council’s policy mention free food and beverages.

The Exception in Regulation 18944.2 Does Not Apply

In its opinion, *In re Stone* (1977) 3 FPPC Ops. 56, the Commission outlined the specific instances when gifts of travel, meals, and accommodations would be deemed to be a gift to a public official's agency for purposes of the Act, rather than to the official using the gift. Under the *Stone* opinion, if a payment to an official satisfied certain criteria, the official would have no reporting obligation. Although free of charge to both the official and his or her agency, the payment would be analogous to reimbursement for expenses or per diem from a state or local government agency, items which are exempted from the definition of "income," including gifts, and are, therefore, not reportable. (Section 82030(b)(2).)

In 1994, the *Stone* opinion was superseded by regulation 18944.2. Although the regulation contains many of *Stone's* requirements, it also differs in several significant respects. (*McKenchnie* Advice Letter, No. I-94-190.) Specifically, regulation 18944.2 provides:

“(a) A payment, which is a gift as defined in Government Code Section 82028, shall be deemed a gift to a public agency, and not a gift to a public official, if all of the following requirements are met:

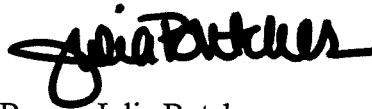
- (1) The agency receives and controls the payment.
- (2) The payment is used for official agency business.
- (3) The agency, in its sole discretion, determines the specific official or officials who shall use the payment. However, the donor may identify a specific purpose for the agency's use of the payment, so long as the donor does not designate the specific official or officials who may use the payment.
- (4) The agency memorializes the payment in a written public record which embodies the requirements of subdivisions (a)(1) to (a)(3) of this regulation set forth above”

You would like to know whether the free food and beverages provided by Service America would be gifts to the city under regulation 18944.2. Subdivision (a)(2) is pertinent to your inquiry, which provides that the payment must be used for “official agency business.” For purposes of regulation 18944.2, a payment is used for “official agency business” if it is used to further an official role or function of the agency. Generally, a payment is *not* used for “official agency business” if the payment is used by the official for his or her own personal use and benefit. (*People v. Vallerga* (1977) 67 Cal.App.3d 847, 874.) Payments for food are a unique subgroup of gifts because of the obviously personal benefit to the recipient. For that reason, regulation 18944.2 does not apply.

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

Sincerely,

Steven G. Churchwell
General Counsel

A handwritten signature in black ink, appearing to read "Julia Butcher". The signature is written in a cursive, flowing style.

By: Julia Butcher
Staff Counsel, Legal Division

SGC:JB:tls