



FAIR POLITICAL PRACTICES COMMISSION

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April 19, 2001

Kathye Blessing
City of Los Angeles
1400 K Street, Suite 208
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-01-068**

Dear Ms. Blessing:

This is in response to your letter requesting advice on behalf of the City of Los Angeles Department of Airports regarding whether the provision of airport parking and shuttle service to the California Senate Rules Committee is a gift reportable by the City of Los Angeles, as a lobbyist employer, under the Political Reform Act (the "Act").¹

QUESTION

If the City of Los Angeles provides passes for free airport parking and shuttle services to the California State Senate Rules Committee, would the city be required to report these passes on its Lobbyist Employer Report, Form 635, as gifts to the individual legislators who use them? If so, would the individual legislators be required to report receipt of the passes as gifts from the City of Los Angeles?

CONCLUSION

As long as the City of Los Angeles does not specify which legislators should receive the passes, the Senate Rules Committee accepts the passes under Regulation 18944.2, and the City is not providing the passes as part of its efforts to lobby the legislature, then the City is not required to report the passes on the Form 635, nor would the legislators who use the passes be required to report them as gifts.

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

FACTS

The City of Los Angeles provides passes for free airport parking and shuttle services to state legislators. As a lobbyist employer, the City of Los Angeles has been reporting the value of these passes as a gift to individual legislators on its Lobbyist Employer Report, Form 635. You have been advised by the California Senate Rules Committee that if the passes are provided directly to the Committee instead of being given to individual legislators, the City of Los Angeles would not be required to report the provision of the passes as gifts to the legislators, nor would individual legislators be required to report the passes as a gift.

ANALYSIS

Employers of lobbyists are required to file periodic reports disclosing, among other things, activity expenses and other payments to influence. Activity expense is defined as:

“...any expense incurred or payment made by a lobbyist, lobbying firm, lobbyist employer or a person described in subdivision (b) of Section 86115, or arranged by a lobbyist or lobbying firm, which benefits in whole or in part any elective state official, legislative official, agency official, state candidate, or a member of the immediate family of one of these individuals. Activity expenses include gifts, honoraria, consulting fees, salaries, and any other form of compensation but do not include campaign contributions.” (Section 86111.)

Under normal circumstances, these parking passes would be considered gifts provided to legislative officials. (Sections 86116, 82038.) The Act defines the term “gift” as: “... any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received....” (Section 82028.)

The term “payment” is defined in Section 82044 to include:

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

However, Regulation 18944.2 provides an exception for those situations where surrounding circumstances show that the gift was made to the official's agency. To determine that a gift has been made to the official's agency and not to the official who uses it, the following four criteria must be satisfied:

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...." (Regulation 18944.2.)

Although it appears that the parking and shuttle passes do qualify as a gift reportable by a lobbyist employer under the activity expense category, if the Senate Rules Committee takes whatever steps are necessary to satisfy the standards established in Regulation 18944.2, the passes will be considered gifts to the Senate Rules Committee and not to the officials who incidentally use them. (See *Kelly* Advice Letter, A-89-458.) Under these circumstances, the City would not need to disclose the passes as an activity expense on its Lobbyist Employer Report.

Lobbyist employers, however, are also required to report "the total of all other payments to influence legislative or administrative action...." (Section 86116(i).) Regulation 18616(f)(2)(C) specifies that "other payments to influence" includes:

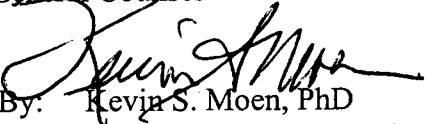
"Payments of any other expenses which would not have been incurred but for the filer's activities to influence or attempt to influence legislative or administrative action...."

Therefore, if the City of Los Angeles provides these passes as part of its lobbying activities, even if the passes are provided to the Senate Rules Committee under Regulation 18944.2, the City would be required to report the passes on its Lobbyist Employer Reports, section D "Other Payments to Influence." However, if the passes are provided to the Senate Rules Committee under Regulation 18944.2 and the passes would be provided even if the City were not engaged in lobbying activity, then the City is not required to report the passes.

If you have additional questions, please do not hesitate to contact me at (916)
322-5660.

Sincerely,

Luisa Menchaca
General Counsel


By: Kevin S. Moen, PhD
Political Reform Consultant