



FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

January 6, 2005

Mehdi Morshed, Executive Director
California High-Speed Rail Authority
925 L Street, Suite 1425
Sacramento, CA 95814

**Re: Your Request for Advice
Our File No. A-04-273**

Dear Mr. Morshed:

This letter is in response to your request on behalf of the California High-Speed Rail Authority (“Authority”) for advice regarding the gift provisions of the Political Reform Act (the “Act”).¹

QUESTION

May proposed payments made by the Japanese-California High Speed Rail Study Group (“Study Group”) and the Japan Overseas Rolling Stock Association (“JORSA”) to host 15 individuals, including California state and local public officials, be considered gifts to the Authority and not to the individual public officials if the requirements of regulation 18944.2 are met?

CONCLUSION

So long as the donors and the Authority comply with regulation 18944.2, the payments will not be “gifts” to public officials of the Authority. However, other public officials, those who accept the invitation for travel and are not on the staff or board of the Authority, will be receiving a gift from the Authority which may be subject to reporting, although not subject to limits.

FACTS

The Study Group, in conjunction with JORSA, has extended an invitation to a maximum of 15 individuals to be selected by the Authority to experience the Shinkansen

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

high speed train in Japan and to visit key facilities of the Shinkansen system. All costs associated with transportation, lodging, and meals will be covered by the Study Group and JORSA.

The Study Group has not extended invitations to specific individuals. Rather, the invitation is extended to those individuals chosen by the Authority who are board members of the Authority, state legislators, administrative representatives, local governmental leaders, members of the business community, and Authority staff members. The Authority is not required to make a selection from each category, but rather the list of categories serves to illustrate the types of individuals the Study Group would like to see participate in the proposed trip.

Although the letter suggests the proposed travel take place in the fall of 2004, any such trip will not occur until the spring of 2005, at the earliest. The Authority intends to select the participants at its January 2005 meeting.

ANALYSIS

Public officials, defined in substantive part in section 82048 as "every member, officer, employee or consultant of a state or local government agency," are prohibited from receiving gifts of more than \$360 from reportable sources on his or her statement of economic interests. (Section 89503 and regulation 18940.2.) (Individuals who are not public officials are not subject to the Act's restrictions.)

A gift is defined, in part, in section 82028 as:

"...any 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."

However, regulation 18944.2 provides a mechanism by which a gift may be deemed made to the agency and not to the officials of the agency. Under the regulation, all of the following requirements must be met in order for this exception to apply:

- (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 [18944.2] set forth above and which:

- (A) Identifies the donor and the official, officials, or class of officials receiving or using the payment;
- (B) Describes the official agency use and the nature and amount of the payment; and
- (C) Is filed with the agency official who maintains the records of the agency's statements of economic interests where the agency has a specific office for the maintenance of such statements, or where no specific office exists for the maintenance of such statements, at a designated office of the agency, and the filing is done within 30 days of the receipt of the payment by the agency. (Regulation 18944.2.)

Therefore, if the criteria in regulation 18944.2 are met, the Authority officials who participate in the proposed travel would not be limited to \$360, nor would they be required to report the payments on their statements of economic interests.

This exception will apply only to public officials of the Authority; other public officials who participate will be deemed to have received a gift from the Authority, which may be reportable on their statements of economic interests.² All state and local elected officers, and other individuals specified in section 87200, are required to report gifts of \$50 or more from the Authority.³ (Sections 87203 and 87207.) Whether members of a state board or commission or designated employees of a state or local government agency are required to report gifts from the Authority depends on the conflict of interest code for their individual agencies.

While gifts of travel to these other public officials must be reported, it does not appear that they will be subject to the \$360 limit. (Section 89506 and regulation 18950.1.) Regulation 18950.1(b) provides that:

“A payment made for travel, including actual transportation and related lodging and subsistence, is not subject to the prohibitions or limitations on honoraria and gifts specified in Government Code Sections 89501, 89502, or 89503 if:

- (1) The travel is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy; and
- (2) The payment is provided by a government, a governmental agency, a foreign government, a governmental authority

² Because the Authority will be directing and controlling the gift of travel by deciding which public officials will be invited to participate, the Authority is considered the source of the gift. (Regulation 18944.2(a)(1).)

³ While generally, the burden of complying with the gift limits of the Act is applicable to the public official, the authority (the donor) also has duties under the Act and is subject to liability under section 89521 for the making of a gift or expenditure in violation of the gift limits. Thus, we advise concerning the authority's duties in connection with public officials designated by the authority to receive the gifts.

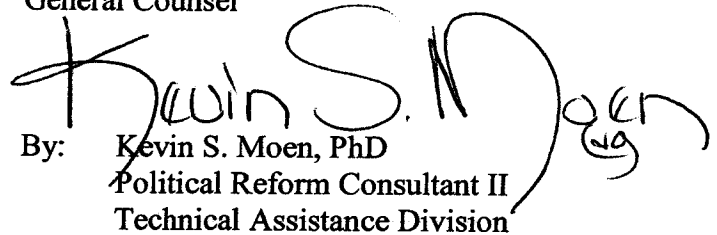
“Except as provided by California Code of Regulations, Title 2, Section 18950.3, any payment made for transportation, lodging, and subsistence, specified by subdivision (b), shall be reported in accordance with Government Code Section 87207(c).”

It appears that the activities for which the travel is proposed are reasonably related to a governmental purpose or to a state issue. Therefore, public officials invited by the Authority to participate, who are not board or staff members to the Authority, must report the value of the gift, even though the amount is not subject to the \$360 limit.⁴

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

Sincerely,

Luisa Menchaca
General Counsel


By: Kevin S. Moen, PhD
Political Reform Consultant II
Technical Assistance Division

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⁴ Please note that Article XII, Section 7, of the California Constitution, states that “[a] transportation company may not grant free passes or discounts to anyone holding an office in this state; and the acceptance of a pass or discount by a public officer, other than a Public Utilities Commissioner, shall work a forfeiture of that office.” Contact the Attorney General’s office at (916) 324-5765 if you have any questions concerning this prohibition.