



## FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

February 28, 2005

The Honorable Ana Ventura Phares  
Mayor  
City of Watsonville  
P.O. Box 50000  
Watsonville, CA 95077

**Re: Your Request for Advice  
Our File No. A-05 -024**

Dear Mayor Phares:

This letter is in response to your request for advice regarding proposed donations to the City of Watsonville to pay your expenses to attend a conference and any restrictions or reporting obligations under the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. May the city receive checks of \$1,000 each from the account of two individuals, a business entity, and a neighborhood organization to reimburse the city for the costs associated with sending you to attend the conference of the National Association of Latino Elected Officials in San Juan, Puerto Rico?
2. If the payments are accepted, would they meet the criteria in regulation 18944.2 to be deemed a gift to the city?
3. If not, could you receive the payments for your portion of the trip personally or into your campaign committee bank account and then reimburse the city?

### CONCLUSIONS

1. While the Act does not prohibit persons from making payments to the city, since the payments in question would confer a personal benefit on you, the payments would be considered gifts from the donors to you. These gifts are limited to \$360 from a single source in a calendar year.

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

2. The proposed payments do not meet the criteria established in regulation 18944.2 and, therefore, would be considered a gift to you, not the city.
3. Yes. Persons, including business entities and neighborhood organizations, may make payments directly to you or to your campaign, after which you or your campaign committee may make payments to the city. Please note that you may not receive a gift of more than \$360 from a single source in a calendar year. In addition, while state law does not limit contributions to a local candidate or officeholder, the city of Watsonville may limit such contributions.

### FACTS

On February 8, 2005, the Watsonville city council approved the expenditure of city funds to be used to send four members of the city council to a conference of the National Association of Latino Elected Officials to be held in San Juan, Puerto Rico. According to a February 11, 2005, phone conversation with your city attorney, Alan Smith, after it was decided which council members would attend the conference, Mr. Smith was offered three \$1,000 checks, one from two individuals, one from a business entity, and one from a neighborhood organization, by a member of the public to help defray the costs associated with the trip.

### ANALYSIS

You ask whether the checks would be gifts to you. A gift is defined in section 82028, in part, 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 89503 provides, in part, that:

“No elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250).”

This section also provides the Commission authority to adjust the gift limit effective January 1 of an odd-numbered year. Regulation 18940.2 states that, as of January 1, 2005, the gift limit is \$360.

Section 89506 and regulation 18942 provide exceptions to when a payment for travel, lodging, and subsistence is not a gift. It does not appear from the facts in your letter, however, that the proposed payments would meet the exceptions. As a general rule, payments made by your campaign, and those made by the city, for your travel related to a political, legislative, or governmental purpose are not considered a gift to you. Section 89506(d) states, in relevant part, that:

“(d) For purposes of this section, a gift of travel does not include any of the following:

- (1) Travel that is paid for from campaign funds, as permitted by Article 4 (commencing with Section 89510), or that is a contribution.
- (2) Travel that is provided by the agency of a local elected officeholder, an elected state officer, member of a state board or commission, an individual specified in Section 87200, or a designated employee.”

However, since the payments in question are coming from a source, or sources, other than that for which an exception applies, the payments would be considered a gift to you.

Regulation 18944.2 provides an exception to the general gift reporting and limitation rules when a gift is made to an official’s agency. The purpose of the regulation is to provide a mechanism whereby a donor may provide goods or services to a public agency without the incidental benefit to a public official being a reportable gift or limited. (*Kaye* Advice Letter, No. A-93-490.) In order for this exception to apply, the regulation provides four criteria that 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.) (Emphasis added.)

As noted, the donor may not designate the specific official or officials who may use the payment. (Regulation 18944.2(a)(3).) The fact that a donor’s check is made out to the city may be probative as to whether or not the gift was earmarked; however, such a fact will not necessarily be the determinative factor. In the past, we have advised that even if a gift was not earmarked, other facts may indicate that the gift was intended for specific officials. (*Kaye* Advice Letter, *supra*.)

In the *Kaye* letter, we opined that, for instance, if the same high-level official and the official’s spouse took a trip for three consecutive years paid for by the same donor, those facts would tend to show that the gift was earmarked for that official. Thus, the *Kaye* letter recognized that, in some circumstances, the totality of the circumstances could inform whether a gift was earmarked for a particular official or officials. Since the city council had already identified those public officials who would attend the conference prior to the offer of the checks, we believe that the checks were earmarked for use by specific public officials. Therefore, the exception in regulation 18944.2 does not apply.

You also ask whether you may accept the payments personally or into your campaign bank account and then make a payment to the city. There is nothing in state law that would prohibit you from accepting a gift of \$360 or less from a single source in a calendar year, as discussed, or from receiving contributions into your active campaign bank account.<sup>2</sup> Neither does state law prohibit you from making a payment to the city from personal funds for any purpose. State law does, however, regulate the use of campaign funds.

Section 89510(b) provides that:

“All contributions deposited into the campaign account shall be deemed to be held in trust for expenses associated with the election of the candidate or for expenses associated with holding office.”

Section 89512.5(b) further states that:

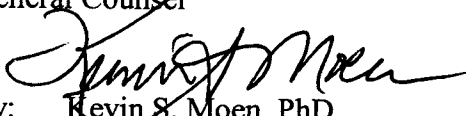
“Any expenditure by a committee that confers a substantial personal benefit on any individual or individuals with authority to approve the expenditure of campaign funds held by the committee, shall be directly related to a political, legislative, or governmental purpose.”<sup>3</sup>

Thus, if payments for travel and accommodations associated with attending the conference are placed into your campaign bank account, since you will be receiving a personal benefit, the expenditure of campaign funds must be directly related to a political, legislative, or governmental purpose. While we are not the finder of fact, it appears payments for your attendance at the conference would meet this criterion.

If you have any additional questions, please feel free to 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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<sup>2</sup> There are no contribution limits imposed by state law for local candidates or officeholders. However, the city of Watsonville may impose limits on contributions you receive.

<sup>3</sup> “Substantial personal benefit” means an expenditure of campaign funds which results in a personal benefit of more than \$200. (Section 89511(b)(3).)