



FAIR POLITICAL PRACTICES COMMISSION

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October 22, 2007

Michele Gault
Office of Lt. Governor John Garamendi
State Capitol, Room 1114
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-07-158

Dear Ms. Gault:

This letter is in response to your request for advice on behalf of Lieutenant Governor John Garamendi ("Lt. Governor") regarding the gift provisions of the Political Reform Act (the "Act").¹

QUESTION

Are payments for travel, lodging, and subsistence made to the Lt. Governor in connection with his trip to Hong Kong and Shanghai, China, subject to reporting and gift limits?

CONCLUSION

Payments for the Lt. Governor's airfare are reportable gifts, not subject to gift limits. Payments for admission, refreshments, and similar non-cash nominal benefits as well as *necessary* lodging and subsistence provided directly in connection with a speech, panel, or seminar, are not reportable or subject to gift limits. Payments for ground transportation, lodging, and subsistence *not* connected to speeches and similar events are reportable but not subject to gift limits if: (1) they are provided in connection with a legislative or governmental purpose or to an issue of state, national, or international public policy, and (2) if they are paid for by a bona fide educational institution or a non-profit organization. All other payments are reportable gifts subject to gift limits.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

FACTS

The Vice-Chancellor and President of the Chinese University of Hong Kong ("CUHK") invited the Lt. Governor to travel to Hong Kong and present a lecture at the University. CUHK will cover the cost of travel and accommodations for the Lt. Governor and a staff member.²

The Hong Kong portion of the trip is scheduled for October 6-9, 2007, (with an October 6 departure from California.) In addition to his lecture at CUHK, the Lt. Governor will conduct a series of meetings with various government officials and deliver a number of luncheon-and-dinner-speeches to various business and non-profit groups.

From Hong Kong, the Lt. Governor will travel to Shanghai on October 9, 2007, where, in his capacity as Lt. Governor and chair of the California Commission for Economic Development, he will represent the State of California at the California Technology Fair ("CTF"). The CTF is a subset of CeBIT Asia, a technology trade fair sponsored in part by the Chinese Government. The Northern California World Trade Center (the "Trade Center"), a 501(c)(3) organization located in Sacramento, will cover the cost of travel and accommodations for the Lt. Governor and a staff member. The purpose of CTF is to enable California businesses to promote their goods and services in China. During his time in Shanghai, the Lt. Governor will make formal presentations regarding the California economy and regulatory environment at several events taking place at CeBIT Asia. The Shanghai portion of the trip is scheduled for October 9-12, 2007, with a departure back to California on October 12.

On October 1, 2007, you sent via e-mail, an updated itinerary for the Lt. Governor's trip. The specific schedule is as follows:

Saturday, October 6: Air travel from Los Angeles to Hong Kong.

Sunday, October 7: Arrive in Hong Kong, transfer to hotel via car service provided by CUHK. Afternoon: schedule TBD. Evening: Dinner event hosted by Janie Fong and East West Bank featuring Frederick Ma, Hong Kong Secretary for Commerce.

Monday, October 8: Morning: Meeting with leadership of the Hong Kong Trade Development Council to discuss trade flows between California and Hong Kong; Afternoon: Lt. Governor is featured speaker for joint luncheon event with AmCham and HK Chamber of Commerce. Car service to event provided by CUHK; Late Afternoon: Meeting with Hong Kong's Chief Secretary for Administration (2nd highest ranking

² During our telephone conversation of October 1, 2007, you stated that you were not requesting advice on behalf of the staff member who will accompany the Lt. Governor. Please note that the staff member will have different reporting obligations from that of the Lt. Governor, depending on the staff member's activities. For instance, the exception under Regulation 18950.3 (for lodging and subsistence provided directly in connection with a speech, panel or seminar), will not apply to the staff member if he or she will not be conducting speeches or participating in panels, seminars, or similar events.

government official in Hong Kong). Car service to event provided by CUHK; Evening: Lt. Governor featured speaker at CUHK, with topic "California's Response to the Challenge of Global Climate Change: Lessons for Chinese Provinces." Dinner hosted by Dr. Lawrence Lau, President of CUHK. Car service to and from event provided by CUHK.

Tuesday, October 9: Morning: Breakfast meeting to discuss California-Hong Kong trade and investment with Federation of Hong Kong Industries, a government group. Mid-morning meeting with Secretary for the Environment. Car service to and from events provided by CUHK (or other non-profit or governmental agency.) Meeting with U.S. Consul General to Hong Kong and Macau. Afternoon: Lt. Governor is featured speaker at luncheon event at the Asia Society (a group that convenes speakers to talk about world affairs that impact Asia) in Hong Kong. Topic "Geopolitical Challenges in an Era of Climate Change." Car service to and from events and to airport for Shanghai flight provided by CUHK (or other non-profit or governmental agency.) Depart for Shanghai. Transportation from airport to Shanghai hotel to be provided by non-profit or governmental agency. Evening: Dinner event in Shanghai hosted by McWong Environmental and Energy Group, a California company based in West Sacramento and Shanghai.

Wednesday, October 10: Morning: Country briefing at U.S. Consulate. Later CeBIT opening ceremony. Afternoon: Luncheon hosted by Bill Barkett and Science and Technology Commission of Shanghai. Following lunch tour of Bao Steel plant. Evening: Dinner hosted by Mayor of Shanghai, Lt. Gov. to offer some remarks. Car service to and from events to be provided by non-profit or governmental agency.

Thursday, October 11: Morning: Meetings TBD. Afternoon: Lt. Governor speaker at luncheon hosted by the AmCham Shanghai, a non-profit group. Topic: "Green Technology and Economic Growth: Opportunities and Pathways to Sustainability for China and the U.S. After lunch, Lt. Governor to participate in AmCham Shanghai Executive Roundtable Session. Topic: "Leadership in an era of climate change." After roundtable, observe signing of MOU between Golden California, Inc. and Regus, to develop a "California Center" in Shanghai. Meet with Mayor of Wuxi City. Private meeting with representatives from Marvell. Evening: Lt. Governor to offer remarks at the CA Technology Fair reception. Dinner hosted by Peter Liu (with venture capital company based in China and San Francisco) at the Westin Bund Center. Lt. Governor will not make any formal speech at event. Transportation to and from events to be provided by non-profit or governmental agency.

Friday, October 12: Morning: Transportation to Pudong International Airport. Afternoon: Depart from Shanghai to San Francisco.

You wish to know if any of the payments for airfare, accommodations, car service, and meal payments are reportable gifts, and if any of the payments for these items are subject to gift limits.

ANALYSIS

Receipt of Gifts

As relevant to your question, the Act imposes different obligations on public officials regarding the receipt of gifts. The following obligations apply to elected state officers such as Lt. Governor Garamendi:

1. Gift Reporting. The Act requires elected state officers to report income and gifts on their statement of economic interests (Sections 87200, 87202-87205, and 87207), if they amount to \$50 or more from a single source during the applicable reporting period. The Act also prohibits the receipt of honoraria. (Section 89502.)

2. Gift Limit. Section 89503 prohibits elected state officers from accepting gifts totaling more than \$390 in value from any single source in any calendar year. (Regulation 18940.2.)³

3. Conflicts of Interest. When an official receives gifts aggregating \$390 or more from the same source within the 12 months preceding a governmental decision, if the decision has a financial impact on that source, the official may have a conflict of interest under the Act. (Sections 87100 and 87103(e).)

Because the Lt. Governor is an elected state officer, the above provisions apply to him.

Gifts of Travel

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" (Emphasis added.)

You stated that the Lt. Governor's purpose in making the trip is to deliver a lecture at CUHK and "conduct a series of meetings with various government officials and

³ Elected state officers are also prohibited from receiving gifts from registered state lobbyists in excess of \$10 each calendar month. (Sections 86201, 86203, and 86204.) The facts you present do not indicate that this will be the case, so we will not discuss these provisions further.

deliver a number of luncheon and dinner speeches to various business and non-profit groups.” Any travel is presumed to confer some personal benefit on a public official.⁴

You also stated that two organizations paying for portions of the Lt. Governor’s trip are CUHK, which you state is both a governmental authority and an educational institution under Section 203 of the Revenue and Taxation Code, and the Trade Center, a 501(c)(3) non-profit entity.

Travel costs paid by a third party generally are reportable gifts under the Act. Therefore, absent an exception, the value of free transportation to Hong Kong and Shanghai, meals, accommodations, and car services, are considered reportable gifts to the Lt. Governor. (Section 82028; *Johnck* Advice Letter, No. A-95-237.) In addition, payments of travel to a public official may also be subject to the reporting requirements, gift limits, the honoraria ban, and disqualification under the Act’s conflict of interest provisions as described below.

Gifts of Travel – Exceptions

Under some circumstances, payments for transportation, lodging, and subsistence may be exempt from the definition of “gift.”

Section 89506(a), in relevant part, provides an exception from the gift limits for certain travel payments:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence which is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if...”

“(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit charitable or religious organization which is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States which substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.”

⁴ In limited situations, payments for travel may constitute “income” to an official if the official provides equal or greater consideration in return. However, we have concluded that merely giving a speech does not constitute providing equal or greater consideration for travel payments. (*Robey* Advice Letter, No. A-00-266; *Allen* Advice Letter, No. A-96-181.) You have not stated that the Lt. Governor will provide any other consideration besides giving a speech or attending certain events. Accordingly, we characterize the travel payments he will receive as gifts, unless an exception applies.

In addition, Regulation 18950.3 provides a limited exemption from both the gift limits and gift reporting requirements for admission, refreshments and similar non-cash nominal benefits on the day of a speech, as well as any necessary lodging and subsistence provided directly in connection with a speech or similar activity. Regulation 18950.3 provides:

“Free admission, and refreshments and similar non-cash nominal benefits provided to a filer during the entire event at which the filer gives a speech, participates in a panel or seminar, or provides a similar service...and any necessary lodging and subsistence provided directly in connection with the speech, panel, seminar, or service, including but not limited to meals and beverages on the day of the activity, are not payments and need not be reported by any filer.”

Speech Given: Pursuant to Regulation 18931.1, “speech given” means a public address, oration, or other form of oral presentation, and includes participation in a panel, seminar, or debate. We have advised that an appearance on a television show to participate in a panel discussion qualifies as a “speech given” by a public official. (*Manson* Advice Letter, No. A-94-308.) However, merely being a “discussant” at a conference does not qualify as giving a speech or oral presentation as required by the regulation. (*Hoehn* Advice Letter, I-92-392.) Similarly, holding informal meetings with constituents or a few individuals who are members of a particular group would not qualify. (*Williams* Advice Letter, No. I-95-405.) In addition, informal remarks made at an event do not constitute “giving a speech” for purposes of Regulation 18931.1 and Section 89506(a)(1). (*Fuller* Advice Letter, No. A-02-307.)

Foreign Travel: Payments Provided in Connection to a Speech, Panel, or Seminar

Necessary Lodging and Meals: An official's *necessary* lodging and “subsistence,” including meals and beverages, provided directly in connection with an event at which the official gives a speech or participates in a panel or seminar are *not* reportable and are *not* subject to gift limits. (Regulation 18950.3.) This exception for necessary lodging and subsistence provided directly in connection with a speech, panel, or seminar, applies to all locations, even outside the United States.

Please note, however, that what constitutes “necessary accommodations” within this exception is generally limited to the day of the speech, and the day before and after if necessary due to travel arrangements. Any accommodations outside these parameters may be considered a gift subject to normal reporting rules and gift limits. (*Allen* Advice Letter, No. I-94-270; *Nishite* Advice Letter, No. A-91-568.)

Accordingly, payments for admission, and refreshments and similar non-cash nominal benefits as well as necessary lodging and meals received by the Lt. Governor directly in connection with speeches, panels, and seminars in Hong Kong and Shanghai are *not* subject to gift limits and are *not* reportable on his statement of economic interests.

The exclusion for lodging, meals, and beverages under this regulation is generally limited to those provided on the day of his speech.

These include, for instance, the Lt. Governor's hotel accommodations on October 8, 2007—the same day which he makes two speeches. Similarly, exempt from reporting or gift limits are the refreshments, meals, and nominal benefits received by the Lt. Governor in connection with the October 8, 2007 speeches (at the luncheon event hosted by the AmCham and the Hong Kong Chamber of Commerce, and the dinner event hosted by CUHK).

Transportation outside the U.S.: The exceptions described above do not apply to a gift of transportation outside the United States even if connected to delivering a speech, panel or similar service.⁵ There is no exception for transportation payments connected with delivering a speech, panel, or seminar outside the United States.

Foreign Travel: Payments reasonably related to a legislative or governmental purpose

As stated above, travel outside the United States is generally reportable and subject to limits unless the travel falls under an exception described in Section 89506(a)(2), which provides under some circumstances that, regardless of whether the official is making a speech, travel expenses reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international policy, are *not prohibited or limited*.

You state that two organizations paying for portions of the Lt. Governor's trip are CUHK, both a governmental authority and an educational institution, and CTF, a 501(c)(3) non-profit entity.

Accordingly, payments provided by these two groups, and any governmental entities,⁶ for the Lt. Governor's transportation (airfare) to Hong Kong and Shanghai, China, car transportation during his stay, and any lodging or subsistence (that are not directly related to a speech, panel, seminar as discussed above) are *reportable gifts* that are *not subject to gift limits* under Section 89506(a)(2).

For instance, the Lt. Governor's hotel accommodations at the Westin Hotel in Shanghai on October 9, 2007, paid for by CTF, would be a gift that is *reportable but not subject to limits*. This payment falls under the exception under Section 89506(a)(2)

⁵ Transportation to and from the event *is not reportable and not subject to gift limits* under Regulation 18950.3 *only if travel is within California*. Section 89506 provides that transportation to and from an event like a speech, panel, or seminar is a reportable gift, but not subject to gift limits, if the travel is within the United States.

⁶ The payments may also be provided by any other groups that qualify under 89506(a)(2), such as a government, a governmental agency, a foreign government, or a governmental authority.

because the Lt. Governor's trip to Shanghai—where he will represent the state in his capacity as Lt. governor and as Chair of the California Commission for Economic Development at a technology trade fair—is reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international policy, and the payment is provided by a non-profit entity.

Similarly, transportation and meals (lunch and dinner) provided to the Lt. Governor on October 10, 2007, would be reportable gifts not subject to limits because these events are related to a legislative or governmental purpose and the payments are provided by the city of Shanghai, a governmental authority.

Foreign Travel: Other payments

Travel payments that do not fall under the exceptions described above are reportable gifts subject to gift limits. For instance, the dinners on: Sunday, October 7, 2007—provided by Janie Fong and East West Bank, a commercial bank; Tuesday, October 9, 2007—provided by McWong Environmental and Energy Group, a for-profit California company;—and on Thursday, October 11, 2007—provided by Peter Liu, who you described during our October 1, 2007 telephone conversation, as someone with a venture capital company based in China and San Francisco—would not fall under the above exceptions. In addition, the portion of the lunch on Wednesday, October 10, 2007, attributable to host Bill Barkett does not appear to qualify for any of the above exceptions. Therefore, if the value of the meals, beverages and any other consideration provided at the events are \$50 or more from a single source, they would be considered gifts subject to the Act's reporting rules and gift limits, and disqualification under the Act's conflict of interest provisions.

Conflict of Interest Disqualification

In addition, a public official who receives gift(s) of \$390 or more may have a financial conflict of interest under the Act. (Sections 87100 et seq.) The official must disqualify himself or herself from voting or otherwise participating in a governmental decision affecting that source, if the payment was received or promised to the official within 12 months preceding the decision. Therefore, if the Lt. Governor accepts a gift valued at \$390 or more, he may be prohibited from participating in governmental decisions affecting that source. If this occurs he should seek further assistance.

Honoraria

Section 89502(a) states that “no elected state officer, elected officer of a local government agency, or other individual specified in Section 87200 shall accept any honorarium.” Section 89501(a) defines honorarium as “any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering.”

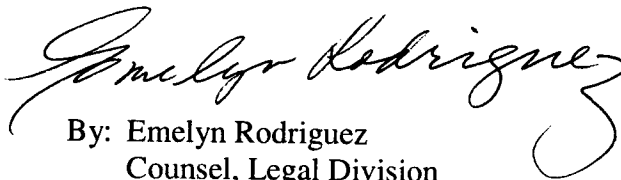
You stated during our October 1, 2007 telephone conversation that the Lt. Governor will not be paid for delivering any speeches or for his attendance at any meetings, panels, seminars or similar events. Therefore, he will not be accepting any honoraria for speeches or similar events.

Additionally, Regulation 18932.4(e) states that "honorarium" does not include "any necessary lodging and subsistence provided directly in connection" with an event in which an official gives a speech or participates in a panel or seminar. Accordingly, payment of actual and necessary lodging and subsistence to the Lt. Governor in connection with his speeches and participation in panels and seminars are not prohibited by the provisions of the Act banning honoraria. Likewise, these travel expenses are not gifts, and are therefore not subject to reporting and gift limits, or conflict of interest disqualification rules imposed by the Act.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Emelyn Rodriguez
Counsel, Legal Division

ER:jgl