



FAIR POLITICAL PRACTICES COMMISSION

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(916) 322-5660 • Fax (916) 322-0886

September 2 2008

Lenna J. Tanner, CMC
City Clerk
City of Chino
13220 Central Avenue
Chino, California 91708

RE: Your Request for Informal Assistance
Our File No. I-08-130

Dear Ms. Tanner:

This letter responds to your request for informal assistance regarding the gift provisions of the Political Reform Act (the "Act")¹ and is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because you have not named a particular public official on whose behalf you are requesting advice, but rather are asking for advice in your role as the city clerk of Chino, we offer only informal assistance.²

FACTS

You are the City Clerk for the City of Chino. The Ontario airport has provided the City of Chino with two VIP parking passes. The elected officials and staff of the city regularly use the passes. A log is kept to record usage.

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3), copy enclosed).

QUESTIONS/DISCUSSION

At the May 19, 2008, Commission meeting the Commission modified Regulation 18944.2 to improve disclosure of gifts to state and local agencies, and clarify the process an agency must use to accept gifts to an agency, which would otherwise be considered a gift to a public official. You have asked how free parking passes provided to your city's elected officials by the Ontario Airport will be treated under the amended regulation.

1. If an elected officer uses the pass for official business, is it reportable on the official's Form 700 (Statement of Economic Interests), Form 801 (Gift to Agency Report), or both?

Payments that qualify as "gifts to an agency" under amended Regulation 18944.2 must be reported on the new Form 801. Gifts that do not qualify under that regulation are reported on the Form 700 by the official who receives the gift.³ Since elected officials (and those in offices listed in Section 87200) cannot receive gifts of travel under Regulation 18944.2, the free parking will be reported on the official's Form 700 if it meets the reporting threshold of \$50 from the same source in the same calendar year.⁴ If the city purchases the passes and provides the passes to their officials and employees, this would not be considered a gift, or income under Section 82030(b)(2) which exempts government salary from reporting.

2. On what schedule of the Form 700 will the payment be reported?

Gifts are reported on schedule D, travel payments are reported on schedule E. The official may report the receipt of the pass on either schedule once reaching the \$50 threshold.

3. If the elected official uses the pass for personal business, but pays the vendor the value of the use of the pass, is it still reportable?

Assuming full payment occurs within 30 days of receipt of the gift, the official will have no reporting obligation. Gifts "paid down" after the 30 days are still considered gifts received and are treated the same as gifts never paid down for reporting purposes.

³ Note that a payment that is a gift to an agency under Regulation 18944.2 is not a gift to an official that uses the payment. Therefore, it will be reported on the new Form 801. Only those payments that do not qualify under the regulation for disclosure on the new Form 801 are reported on the benefiting officials Form 700. The same payment will not be reported on both.

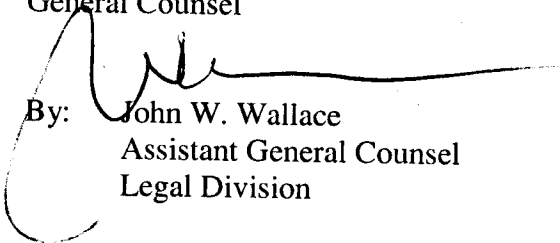
⁴ Note that a gift of travel, including free parking provided as part of travel, related to an issue of state, national, or international public policy is normally reportable on the elected official's Form 700 but is not subject to the \$390 gift limit when the gift of travel is provided by, among other sources, a government agency or an organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

4. If an employee who was not elected and not holding an office listed in Section 87200 uses the pass, must the value be reported on the Form 801?

Assuming all the requirements of Regulation 18944.2 are met, the gift would be a gift to the agency and reported on the Form 801. If the requirements of Regulation 18944.2 are not met, use of the pass must be reported as a gift on the employee's form 700 if the employee is designated in the city's conflict-of-interest code and required to disclose income (including gifts and travel payments) from the Ontario airport.

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

Sincerely,
Scott Hallabrin
General Counsel

By:  John W. Wallace
Assistant General Counsel
Legal Division

JWW:jgl

August , 2008

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