



FAIR POLITICAL PRACTICES COMMISSION

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September 15, 2008

Colleen Finnegan
Community Arts Coordinator
City of Carlsbad
1200 Carlsbad Village Drive
Carlsbad, California 92008-1989

Re: Your Request for Advice
Our File No. A-08-157

Dear Ms. Finnegan:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹

QUESTION

As a designated employee of the City of Carlsbad, may you accept a gift of travel, lodging and subsistence from a government agency of the city of Futtsu, Japan for a trip where you will be representing the City of Carlsbad at a twenty-year anniversary celebration of the sister city relationship between the cities of Carlsbad and Futtsu? If so, must the gifts be reported?

CONCLUSION

The gift of travel and related lodging and subsistence from the Futtsu government is not subject to the gift limit because it is reasonably related to a legislative or governmental purpose. However, the gifts are disclosable on your annual statement of economic interests and subject to the conflict-of-interest provisions of the Act unless another exception applies, as described below.

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

You are the Community Arts Coordinator for the City of Carlsbad, a position designated in the city's conflict-of-interest code. For the past 18 years you have been the city staff liaison to the city's Sister City Committee. In that role, you have been invited by the Futtsu International Relations Association ("FIRA"), of Futtsu, Japan, to attend and speak at the 20th Anniversary Sister City Celebrations celebrating the sister city relationship between the two cities. In your letter you describe FIRA as a non-profit organization of citizens of Futtsu whose purpose is to manage the sister cities relationships between Futtsu and its international partners. However, you subsequently clarified the status of FIRA by sending us a copy of a letter from the Chairperson of FIRA indicating that FIRA is a government organization. Your trip will include a ceremony to be held on one day at which you will speak and an official tour of community facilities, including schools and local government buildings, on the next day. FIRA has offered to pay for your round-trip transportation between Los Angeles and Futtsu, three days and three nights of lodging in Futtsu and food and beverages during the your visit. If you decide to travel to other parts of Japan after the official trip is over, you will do so at your own expense.

ANALYSIS

Gifts Generally

The Act imposes certain obligations on public officials regarding the receipt of gifts. First, Section 89503(c) provides a gift limit for designated employees of local government agencies. Second, the Act requires that every local government agency adopt a conflict-of-interest code designating categories of employees who must disclose their economic interests, including specified donors of gifts aggregating to \$50 or more from the same source, that could foreseeably be financially affected by the exercise of their duties. (Section 87300.) Third, Section 87100 requires that public officials disqualify themselves from any governmental decision that will have a foreseeable and material financial effect on a donor of gifts aggregating \$390 or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made. (Section 87103(e).) Generally, when an official receives a payment or reimbursement for travel, including transportation and related meals and lodging, that payment or reimbursement is considered to be a gift² unless an exception applies. Below, we discuss the gift rules applicable to your travel.

² Section 82028(a) essentially provides that a gift includes any payment, including reimbursement, that confers a personal benefit to the extent equal or greater consideration is not provided in return. An official who claims that a payment is not a gift by reason of providing equal or greater consideration has the burden of proving so.

Gift Limit – Exception for Travel Payments

Section 89503(c) provides, in pertinent part, that no designated employee of a local elected government agency may accept gifts from any single source in any calendar year worth in excess of the gift limit if the official would be required to report the receipt of income or gifts from that source on his or her statement of economic interests. The current gift limit is \$390. (Regulation 18940.2.) As a designated employee of the City of Carlsbad, you are required to disclose the name and address of each source of a gift of \$50 or more received during the previous 12 months. (Sections 87300, Regulation 18730.)

Payments for travel, however, are not subject to the gift limit if permitted by Section 89506, which provides, in pertinent part, that payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence, that is reasonably related to a legislative or governmental purpose are not prohibited or limited if the travel is provided by a government, a governmental agency, a foreign government, or a governmental authority. (Section 89506(a)(2).) If a gift of travel meets these requirements, it is not subject to the annual gift limit of \$390 per source. (Regulation 18942(b)(1).)

The issue is whether your trip to Futtsu, Japan is reasonably related to a legislative or governmental purpose. The city of Futtsu is a sister city of Carlsbad and you are a designated representative for this relationship between Carlsbad and Futtsu. While in Futtsu, you will attend a celebration ceremony at which you will deliver a speech and will be taken on an official tour of government facilities.

We have advised that travel expenses provided to a county supervisor to explore a sister city relationship with a province in China was reasonably related to a legislative or governmental purpose. (*Bagatelos* Advice Letter, No. A-93-309.) Similarly, we advised that a travel payment made for the purpose of sending a representative of the Governor's office to a signing ceremony of a sister state was also reasonably related to a legislative or governmental purpose. (*Wong* Advice Letter, No. A-96-297.) We have also advised that the reimbursement of travel expenses provided to an employee of a mayor's office to further the goal of a sister city agreement was also reasonably related to a legislative or governmental purpose. (*Sylvia* Advice Letter, No. A- 97-139.) Your trip to Futtsu is similar to those in the cited advice letters in that you have been invited to represent your city to further the goals of the sister city relationship of the two cities. We conclude that your trip to Futtsu, Japan is reasonably related to a legislative or governmental purpose. Thus, the payments for transportation to and from Futtsu and related lodging and subsistence are gifts that are not subject to the \$390 gift limit. However, such gifts are reportable on your statement of economic interests (Form 700) and are subject to the conflict-of-interest provisions of the Act *unless another exception applies*. (Section 87207(c), Regulation 18950.1(b).)

Exception for Travel in Connection with Speeches

Regulation 18950.3 provides a limited exemption from both the gift limits and gift reporting requirements for “free admission, and refreshments and similar non-cash 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”³

We have previously advised that Regulation 18950.3 generally exempts necessary meals and beverages on the day of the speech and necessary lodging on the day of the speech, and possibly the day before the speech and the day after the speech if necessary due to travel time. (*Gault* Advice Letter, No. A-07-158, citing to *Allen* Advice Letter, No. I-94-270 and *Nishite* Advice Letter No. A-91-568.) Any accommodations outside these parameters may be considered gifts subject to normal reporting rules and gift limits, unless another exception applies.

Exception for Informational Material

Informational material is expressly excluded from the definition of gift. Section 82028 provides that the term “gift” does not include “informational material such as books, reports, pamphlets, calendars, or periodicals.” It also provides that “no payment for travel or reimbursement for any expenses shall be deemed ‘informational material.’” (Section 82028(b)(1).)

The Commission has interpreted “informational material” to include informational tours. (*In re Spellman* (1975) 1 FPPC Ops. 6.)⁴ An informational tour falls within the gift exception if it is specifically designed for the purpose of assisting the public official in the performance of his or her official duties. (Regulation 18942.1(c).) Informational material may include on-site demonstrations, tours, or inspections designed specifically for public officials. (*Briggs* Advice Letter, No. A-93-210.) We have looked at several factors when determining whether a tour is indeed informational material, including the fact that the tour will primarily convey information, the tour is specifically designed for public officials, and the tour was formally structured to convey information to the officials. We also look to see that the tour does not appear extravagant in value or nature in relationship to the information conveyed. (*Barker* Advice Letter, No. 1-93-186.)

³ The exception contained in Regulation 18950.3 does not apply to a gift of transportation outside the United States even in connection with delivering a speech, panel or similar service.

⁴ The acquisition of adequate information is essential to sound legislative and administrative action. It is not the purpose of the Political Reform Act to interfere in any way in the free flow of information to officials. Only financial pressures and inducements are sought to be limited and disclosed. (*In re Spellman. supra.*)

Applying these factors to the tour of government facilities, it appears that your tour of government facilities is specifically designed for this visit of public officials and is structured to provide information of interest to public officials participating in the sister city program. As your city's representative for this program, we believe that the tour will indeed be informational material.

However, travel or transportation provided to a public official in connection with a tour does not fall within this exclusion unless such transportation is not commercially available. (Section 82028(b)(1).) Air transportation to and from Japan is widely available commercially, as would, we presume, ground transportation to your various destinations in Japan. Consequently, absent additional information, any transportation provided to you in connection with this travel will not fall within the "informational material" exception.⁵

Summary

Not a reportable gift and not subject to the gift limits.

Under the exception for travel in connection with making a speech, free admission to the ceremony where you will deliver the speech, refreshments served at the ceremony, meals and beverages consumed on that day and necessary lodging are not gifts. (Lodging for the day before and after the speech are also not gifts if necessary for travel time.) These are not subject to the gift limits and do not need to be reported on your Form 700. (Regulation 18950.3.) The tour of government facilities is not a gift because it is an informational tour. We presume, absent additional facts, that all transportation in connection with the tour is a reportable gift because it is commercially obtainable. In that case, the transportation is reportable but not subject to the gift limits. (Section 89506; Regulation 189501.1(b).)

Gifts that are not subject to the gift limit but are reportable.

Under Section 89506(a)(2), payment by FIRA for transportation to and from, and ground transportation in, Futtsu is not subject to the gift limit but is reportable on your Form 700. With respect to lodging, if you are provided free lodging beyond that permitted under Regulation 18950.3, the cost thereof would not be subject to the gift limit but would be reportable. Similarly, the cost of meals and beverages ("subsistence") beyond that permitted under 18950.3 (meals and beverages on days other than the day

⁵ We have previously advised that aerial and bus tours formally structured to convey information to an official, particularly where the donor will not be appearing before the agency, nor will be otherwise impacted financially by the agency's decision, and where the tour appeared to be a reasonable means to convey the information, did not appear extravagant in value or nature in relationship to the information conveyed, and did not involve other benefits, detours or other excursions, were informational tours excluded from the definition of a "gift." (*Rudolph* Advice Letter, No. A-01-220; *Villines* Advice Letter, No. I-05-201; *Barker* Advice Letter, No. I-93-186.)

you will be delivering your speech) are not subject to the \$390 gift limit but are reportable on Form 700.

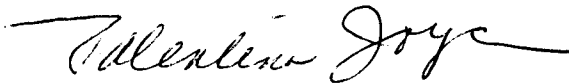
Gifts subject to the gift limit and reportable.

Any transportation, lodging, meals, beverages, free admissions to concerts, galas, banquets, or other events that do not fall within the above described exceptions are reportable gifts subject to the gift limits.

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

Sincerely,

Scott Hallabrin
General Counsel

A handwritten signature in cursive script that reads "Valentina Joyce". The signature is written in black ink and is positioned above the typed name.

By: Valentina Joyce
Counsel, Legal Division

VJ:jgl