



FAIR POLITICAL PRACTICES COMMISSION

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

(916) 322-5660 • Fax (916) 322-0886

October 6, 2008

Daniel S. Hentschke
General Counsel
San Diego County Water Authority
4677 Overland Avenue
San Diego, California 92123

Re: Your Request for Informal Assistance
Our File No. I-08-166

Dear Mr. Hentschke:

This letter responds to your request for informal assistance regarding the gift provisions of the Political Reform Act (the "Act").¹ Because you seek general guidance, it is appropriate that you seek informal assistance, rather than advice. However, informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

QUESTIONS

When meals are provided by a local government agency to its officials and designated employees and the officials and designated employees of another local government agency during meetings at which government business of both agencies is discussed, are the meals considered to be gifts to the officials and employees of the other agency? If so, are these gifts subject to the gift limit of Section 89503 or are they exempt "subsistence" under Section 89506?

CONCLUSION

The meals are gifts because they confer a personal benefit upon the officials and the designated employees of the other agency. Because they do not fall within any of the

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.

Act's exemptions to the gift rules, they are reportable gifts subject to the gift limit of Section 89503.

FACTS

From time to time, members of the board of directors, the general manager, general counsel and other designated employees of the San Diego County Water Authority (the "Water Authority") meet to discuss government business over breakfast, lunch, or dinner with public officials and designated employees of other local government agencies. The Water Authority board of directors has authorized certain officers and employees to schedule these meetings and pay for the meals with Water Authority funds. Also, from time to time, the meals are paid for by the other agency. As General Counsel of the Water Authority, you ask whether, under these circumstances, the payment by a local governmental agency for meals for officials and designated employees of another local government agency is a gift to those officials and designated employees, and if so, whether the gift is subject to the gift limits.

ANALYSIS

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.)

In most cases, food and drink received by a public official are considered gifts. (Regulation 18941.1.) Moreover, in the *Yee* Advice Letter, No. A-98-197 (copy enclosed), we advised that a payment may confer a personal benefit to an official even where it facilitates the conduct of governmental business. Thus, even though government agency business is discussed over the meals you have described, the paying government agency is conferring a personal benefit on the officials and designated employees of the other agency, unless an exception applies.

You have asked specifically whether the exception of Section 89506(a)(2) applies as a subsistence payment from a government agency. Section 89506(a) provides, in pertinent part, that certain payments 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 or government agency. (Section 89506(a)(2).) Both Section 89506(a) and Regulation 18950.1(b) use the same language to bring within

this exception meals associated with travel: “. . . travel, including actual transportation and related lodging and subsistence . . .” Thus, the “subsistence” that is exempt from the gift rule is that which is “related” to “travel.” The plain meaning of the word “travel” is to go on a trip or tour; to journey.² The meetings you have described do not appear to involve travel. Accordingly, the meals are not “subsistence” related to “travel” and do not fall within the exception of Section 89506. They are reportable under Section 87300 and Regulation 18730 and are subject to the gift limit of Section 89503 if the employee is required to report the receipt of income or gifts from that source on his or her statement of economic interests.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Valentina Joyce
Counsel, Legal Division

VJ:jgl

Enclosure

² Webster's New American Dictionary, Copyright 1995 by Merriam-Webster, Inc.