



FAIR POLITICAL PRACTICES COMMISSION

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July 2, 2009

Juli C. Scott
Chief Assistant City Attorney
275 East Olive Ave
Burbank, CA 91510-6459

Re: Your Request for Advice
Our file No. A-09-148¹

Dear Ms. Scott:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").² This letter is based on the facts presented; the Fair Political Practices Commission (the "Commission") does not act as the finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. Of the payments that the Metropolitan Water District (the "MWD") will make for various Burbank city employees and officials and their spouses to tour the Northern California State Water Project and Sacramento Delta to learn about environmental problems in the Delta, which are gifts subject to the Act's gift limits and reporting requirements?
2. Will any of the city officials who participate in this trip be thereafter disqualified from participating for 12 months after the trip in any municipal decisions that are substantially likely to have a material financial effect on MWD?
3. Does the City of Burbank's status as a "member agency" of MWD change the nature of or otherwise abrogate the reporting or other requirements of the Political Reform Act?

¹ This letter's immunity against any enforcement action does not extend to unnamed officials for the City of Burbank, though its guidance applies to them as well as the named officials.

² 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.

CONCLUSIONS

1. As discussed more fully below, the payments that the MWD will make are categorized as follows:
 - a. Payments offered to and used by the employees' and officials' spouses, as explained below, are not gifts to the employees or officials.
 - b. The following are reportable gifts to the officials and employees, not subject to gift limit:
 - i. Airfare from Burbank to the Sacramento Delta region.
 - ii. Meals and lodging.
 - c. The following is not a gift under the "informational material" exception to the gift rule:
 - i. Bus tour of Delta region.
2. If a public official receives a gift of \$420 or more from the MWD, he or she has an economic interest in the source of the gift that could create a potential conflict of interest regarding decisions before the official, as discussed below.
3. Burbank's status as a "member agency" does not affect the analysis below.

FACTS

You are the City Attorney of the City of Burbank. Four city councilmembers have asked you about the propriety under the Act of accepting an invitation from the MWD to view water conveyance facilities. Gary Bric (Mayor), David Gordon, Anja Reinke, and Jess Talamantes ask, on behalf of themselves, their spouses, and other city officials and employees, whether they may accept an invitation for a trip that is wholly sponsored by another governmental agency, the MWD. Burbank is a "member agency" of the MWD and has an appointee on the WMD Board of Directors. Burbank also purchases its water from MWD.

The MWD recently invited a number of City of Burbank public officials (City Council members, Planning Board Members, and City employees (some of whom are Form 700 filers)) on an "educational field trip" to the Northern California State Water Project and facilities and the Sacramento Delta. The focus of the trip was to learn about environmental problems currently being experienced in the Delta, the current significant reduction in the state's water supplies and proposed solutions. The MWD proposed to pay all expenses for this trip, including airfare between Burbank and Sacramento, a chartered bus for the facilities visits, lodging and all meals at an estimated value of \$600.00 per person. While this trip was canceled, another trip similar in nature, scope and value is proposed to be scheduled for September of this year ("September trip").

The MWD has advised that the estimated costs for the September trip will be either \$600 for a two-day trip or \$800 for a three-day trip (the trip will be either two or

three days). These expenses are broken down as follows:

- Airfare, approximately \$250.
- Bus transportation to and from sites, approximately \$135/trip.
- Meals, approximately \$80/day.
- Lodging, approximately \$135/night.

ANALYSIS

Gifts, generally

The Act establishes a statutory and regulatory scheme to reduce influences on public officials³ from the receipt of gifts. First, it prohibits certain public officials from accepting large gifts (currently defined as more than \$420) from identified sources. (Section 89503, Regulation 18940.2.) Second, it requires certain public officials to disclose their receipt of any gift of \$50 or more from identified sources, so that the public is made aware of such gifts. (Sections 87207 and 87302.) Finally, it prohibits a public official from using making, participating in making, or using his or her position to influence the outcome of a decision involving the donor of a gift valued at \$420 or more. (Section 87100, 87103(e), Regulation 18940.2.)

The Act defines the term “gift” as:

“Any 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.” (Section 82028(a).)

Absent an exception, the value of the entire trip that MWD will provide to view various water conveyance facilities would be a gift subject to the Act’s gift disclosure and limits, to participating council members. (See Sections 87200 and 87207(a)(1).) It would likewise be a gift subject to the Act’s gift disclosure and limits for those city officials and employees who are required to report gifts from entities such as MWD under the City’s conflict-of-interest code. (Section 87302(b).)

Finally, under Regulation 18944, a gift offered to a member or an official’s immediate family is not a gift to the official for purposes of the Act unless the official enjoys a direct benefit from the gift, uses the gift, or exercises discretion and control over who will use or dispose of the gift. Therefore, in regards to MWD’s offer of this gift to the spouses of public officials, there will be no gift the officials for their spouses gifts so long as the offer was made for the spouse and the official does not use this gift for another individual.

³ Section 82048 defines “public official” as every member, officer, employee or consultant of a state or local government agency.

Exception: Informational Material

One exception to the Act's gift rules applies to certain "informational material" provided to an official. Specifically:

"(b) The term 'gift' does not include:

"(1) Informational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed "informational material." (Section 82028(b)(1).)

Regulation 18942.1 defines 'informational material' as: "any item which serves primarily to convey information and which is provided to an official for the purpose of assisting him or her in the performance of his or her official duties. Informational material may include:

* * *

"(c) On-site demonstrations, tours, or inspections designed specifically for public officials. No payment for transportation to an inspection, tour, or demonstration site, nor reimbursement for any expenses in connection there-with, shall be deemed 'informational material' except insofar as such transportation is not commercially obtainable."⁴

In the *Barker* Advice Letter, No. I-93-186, we applied this exception to a similar tour of the Delta and advised that the aerial (and bus) tour of the Delta would be considered "informational material." In that case, the tour of the Delta and water facilities was reasonably necessary to assist members of the Legislature in dealing with legislation relating to California water policy.

Moreover, in that case, the tour was designed in coordination and cooperation with the California Department of Water Resources and the California Department of Fish and Game specifically for the Legislators, and was formally structured to convey information to the officials. We advised that under the circumstances, it appeared to be a reasonable means to convey the information and did not appear extravagant in value or nature in relationship to the information conveyed. (*Barker*, supra, No. I-93-186; see also *Villines* Advice Letter, I-05-201.)

Under your facts, the MWD will provide the information for city councilmembers and other public employees and officials by taking them on a tour of the Sacramento Delta region. The MWD is a public agency that sells water and has several member-agencies. The City of Burbank is one such member agency.

⁴ The basis for this exception was described in *In re Spellman* (1975) 1 FPCC Ops. 16, in which the Commission considered a tour provided by Pacific Gas & Electric Company. "The acquisition of adequate information is essential to sound legislative and administrative action. It is not the purpose for the Political Reform Act in any way to interfere in the free flow of information to officials. Only financial pressures and inducements are sought to be limited and disclosed. See Section 81001(b). The tour outlined here would increase the knowledge of the legislative official and would neither be prohibited nor reportable as a gift under the Act."

The MWD will conduct a tour of the Sacramento Delta region so that it can inform the participants about problems facing the Delta, reduced water supplies, and proposed solutions. The tour is a means to convey the information and does not appear extravagant in value or nature in relationship to the information conveyed. Due to the reasonable nature of the tour and the informational purpose, no reportable gift would therefore result as applied to the tour itself, which would in this case consist of the \$135 cost for the bus transportation. However, as stated above, the airfare, lodging, and meals unless subject to any of other exception, are gifts under the Act and not subject to the "informational material" exception.

Exception: Gifts to an Agency

The airfare, food, and lodging are not covered under the informational material exception, as explained above. Moreover, Regulation 18944.2, which in some cases permits an agency to accept a gift in lieu of its officials explicitly states that the gift to agency rules do not apply to payments made for travel, meals, or lodging for Section 82020 officials (elected officials) or Section 87200 filers. The gift to agency rule would therefore not apply to these city officials. It could apply, however, to other city officials if the requirements of the regulation are followed. We enclose a copy of Regulation 18944.2 for your review.

Reporting and limits: Gifts of Travel

Under the Act, any travel is presumed to confer some personal benefit on a public official. In addition, travel costs paid for by a third party generally are reportable gifts under the Act. Therefore, absent an exception, the value of free transportation from the MWD to the Sacramento Delta region, meals, and accommodations are considered reportable gifts to an official. (Section 82028; *Gault* Advice Letter, No. A-07-158.) As explained above, it appears there is no exception that would exempt these items from being reportable gifts to the mayor and city councilmembers, or to city officials who would be required to report MWD as a source of gifts under the city's conflict-of-interest code.

However, even though they are reportable gifts to the officials, under some circumstances, payments for transportation, lodging, and subsistence may be exempt from the Act's gift limit of \$420.

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”

Thus, under your facts, the airfare, meals, and lodging would be gifts to these officials, subject to the Act’s reporting requirements but, because they are provided by MWD and relate to an issue of public policy, they are not subject to the Act’s gift limit of \$420.

Conflict of Interest

The Act’s conflict-of-interest provisions ensure that public officials “perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them.” (Section 81001(b).) Specifically, Section 87100 prohibits any public official from making, participating in making, or otherwise using his or her official position to influence a governmental decision in which the official has a financial interest.

Receiving a gift creates a potential conflict of interest for a public official if the gift meets or exceeds the gift limit of \$420. (See Section 87103.) If the official has a decision before him or her that involves the source of the gift, in this case MWD, the official would need to analyze whether there is a conflict of interest. (See the enclosed brochure, “Can I Vote?”) Note, however, that if a governmental agency is the source of the gift, the public generally exception normally applies unless the government decision uniquely benefits the official. (See Regulation 18707.1(b)(1)(D), and the “Comment” at the end of that regulation.)

Member Agencies

The fact that Burbank is a “Member Agency” to the MWD does not change the analyses above. The MWD is organized by statute through member organizations that are public agencies and municipalities. Each entity is separate and distinct, and each official remains subject to the reporting requirements and limitations outlined above.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Heather M. Rowan
Counsel, Legal Division

HMR:jgl

Enclosure