



FAIR POLITICAL PRACTICES COMMISSION

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July 14, 2010

Steven Wang
Assistant City Attorney
City of Folsom
50 Natoma Street
Folsom, California 95630

Re: Your Request for Advice
Our File No. A-10-108

Dear Mr. Wang:

This letter responds to your request for advice on behalf of Jeffrey Starsky, Mayor of the City of Folsom, regarding the gift and travel provisions of the Political Reform Act (the "Act").¹ Our advice 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.) Nothing in this letter should be construed to evaluate any conduct that has already taken place.

Additionally, our advice is limited to obligations arising under the Act.

QUESTIONS

1. May Mayor Starsky accept a travel payment from the Folsom Economic Development Corporation (FED Corps.), a non-profit organization under Section 501(c)(3) of the Internal Revenue Code, to participate in a the 2010 Study Mission put on by the El Dorado County Chamber of Commerce?

2. If so, is the gift reportable?

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.

CONCLUSION

1. Yes. The gift of travel, including the \$470 fee to the travel agency for booking the transportation, is not subject to the Act's gift limits because the payment is made by a 501(c)(3) organization and the travel appears reasonably related to a governmental purpose.
2. Yes. Although not subject to limits, the gift is reportable.

FACTS

Mayor Starsky will be attending the "Study Mission" in Spokane, Washington and Coeur d'Alene, Idaho for four days from July 15-18, 2010. According to the brochure you have provided, the:

"trip will include how collaboration has showcased this region to become a leader in 'Going Green.' Study Mission participants will learn first hand how the city creates a sustainable culture in the business community and how they promote their message for the benefit of the city, its residents and its visitors. The region's many assets, including its rich agricultural and abundant recreation, all in close proximity (sic) to a thriving urban center, offer many parallels to El Dorado County, Folsom and the region."

The cost of the trip is \$1,900, which includes \$465 for transportation, \$615 for three nights lodging, \$350 for meals, and \$470 for administrative expenses.² FED Corps, a non-profit organization under Section 501(c)(3) of the Internal Revenue Code, is proposing to pay the entire cost of the trip to have the mayor attend the conference.

Mayor Starsky will be attending this Study Mission in his official capacity as mayor. The Study Mission will focus on local government issues relating to transportation, land use policies, redevelopment, and sustainable living development practices, among other topics germane to local planning and government functions.

ANALYSIS

Making and Receipt of Gifts

The term "gift" is defined in Section 82028(a) 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

² The \$470 administrative fee is a payment to the travel agency contracted by the El Dorado County Chamber of Commerce for booking transportation, lodging, and meals for the participants. It is part of the travel cost to attend the 2010 Study Mission, and all participants are required to pay this fee.

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.”³

The Act regulates the receipt of gifts by local public officials in three ways that are relevant to your question.

- First, the Act places limitations on the acceptance of gifts by certain public officials. As mayor, Mayor Starsky is prohibited from accepting gifts from any single source in any calendar year with a total value of more than the gift limit. (Section 89503(a).) The current gift limit, which is adjusted biennially each odd-numbered year to reflect changes in the Consumer Price Index, is \$420. (Regulation 18940.2.)
- Secondly, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations requiring certain public officials to disclose the source of any gifts aggregating \$50 or more in value. Section 87203 provides that “[e]very person who holds an office specified in Section 87200 shall . . . file a statement disclosing his [or her] investments, his [or her] interests in real property and his [or her] income . . .” The term “income” includes any gift. (Section 82030.) As a city council member, Mayor Starsky holds an office specified in Section 87200. Accordingly, he must report the name and address of each source of gifts aggregating \$50 or more in value. (Section 87207(a)(1).)
- Finally, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$420 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e), Regulations 18700, 18703.4.)

Notwithstanding the general gift provisions explained above, Section 89506 controls whether a gift of travel is subject to the Act’s gift limit, providing the following in pertinent part:

“(a) Payments, advances, or reimbursements, for travel, including actual transportation and related lodging and subsistence that are 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 either of the following apply:

* * *

“(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 organization that is exempt from taxation

³ Section 82044 defines payment, in part, as any “rendering of . . . services or anything else of value, whether tangible or intangible.”

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.”

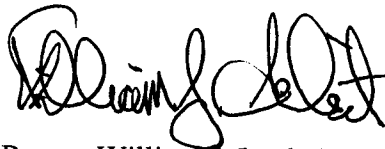
Based upon the facts you have provided, the travel payments in question appear to be “reasonably related to a legislative or governmental purpose” and are provided by a “nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.” Accordingly, the payment is not subject to the Act’s \$420 gift limit, but would be reportable by Mayor Starky and require him to disqualify himself from any governmental decision with a reasonably foreseeable material financial effect on the source of a gift or gifts with an aggregate value of \$420 or more in any 12-month period prior to his participation in the decision.

Please note, however, that the exception to the \$420 gift limit only applies to the costs of travel such as transportation and related lodging and subsistence paid by FED Corps. It does not apply to payments for activities during the trip that do not constitute transportation, lodging, or subsistence.

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

Sincerely,

Scott Hallabrin
General Counsel



By: William J. Lenkeit
Senior Counsel, Legal Division

WJL:jgl