



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION

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May 15, 2015

Deena R. Ghaly  
Ethics Officer  
Metropolitan Water District  
of Southern California  
P O Box 54153  
Los Angeles, CA 90054-0153

Re: Your Request for Informal Assistance  
**Our File No. I-15-077**

Dear Ms. Ghaly:

This letter responds to your request for advice on behalf of the Metropolitan Water District of Southern California ("MWD") regarding gift of travel provisions of the Political Reform Act (the "Act").<sup>1</sup> Additionally, this letter is based on the facts presented. The Fair Political Practices Commission does not act as a finder of fact when it provides advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) We offer no opinion on the application of laws other than the Act. Because your questions are general in nature and not about specific payments or officials, we are treating your request as one for informal assistance.<sup>2</sup>

### FACTS

MWD regularly conducts educational field inspection trips of its water facilities for the purpose of providing leading citizens and other interested persons with firsthand knowledge of the MWD's operations. Participants often include legislators, city council members, water board members and other public officials.

MWD provides transportation to the facilities being viewed, usually by charter bus, and food for attendees, and provides lodging if the inspection requires an overnight stay. Additionally MWD may pay for commercial airfare to and from the beginning and ending points of the inspection trip.

MWD's board both authorizes these trips and obligates each of its members (directors) to periodically sponsor them. For each trip, the sponsoring director must select or help select guests on behalf of his or her member agency and MWD. Per MWD's administrative code, the sponsoring

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<sup>1</sup> 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.

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

director may be accompanied by one family member. In addition, MWD directors attending a trip hosted by another director sometimes are accompanied by a family member or other guest of their choosing. Public officials who participate are also sometimes accompanied by a colleague, family member, or friend of their choosing. In some cases, the invitation to attend a trip expressly encourages the primary invitee to bring a guest of his or her choosing.

In July 2009, the Commission responded to a request for advice from the City of Burbank about the application of the Act's gift provisions to its public officials participating on a MWD inspection trip. There, MWD had invited and paid the travel costs for both the officials and their spouses who accompanied them. The *Scott* Advice Letter, No. A-09-148 drew two conclusions:

1. MWD's payments for the officials' spouses did not constitute a gift to the officials. At that time, Regulation 18944 specified that a public official receives a direct personal benefit from a gift whenever he or she exercised discretion and control over who would use it. Because MWD's offer of the trip went directly to the officials' spouses, the letter concluded that there was no gift to the officials; and

2. The travel payments qualified for the exception in Section 89506(a) for education-related travel offered to public officials. As such, they were not subject to the gift limit but were reportable on officials' economic disclosure statements.

You also noted that in late 2011, the Commission adopted Regulation 18943 to replace Regulation 18944. The provisions of former Regulation 18944 stated that when a public official exercises discretion and control over disposition of a gift the official receives a "gift" under the Act. In its place, Regulation 18943 applied a different standard based on whether there is an established working or social relationship between the donor and the official's family or evidence to suggest that a donor is trying to influence the public official through gifts to his or her family members.

On its face, you stated, the amendment seems intended wholly to replace the prior standard (including its "discretion and control" proxy for personal benefit). However, the staff memorandum accompanying the change stated, "[t]his version does not eliminate any of the principals [sic] contained in the current version." Thus, you believe that under current law, it is unclear whether a public official exercising "discretion and control" by inviting a second guest of his or her choosing to attend a MWD inspection trip as encouraged or allowed by MWD or its member agencies is enough for the guest's travel costs to be considered a gift to the public official.

## ANALYSIS

### *A. Questions Regarding gifts from MWD to MWD directors.*

*1. Are travel costs (transportation, lodging and food) paid for by the MWD for inspection trips that a MWD director attends considered "gifts" to him or her?*

Your question concerns payments by a government agency to members of that agency's board of directors. With few exceptions, the Act does not regulate an agency's proper use of public funds. However, other laws prohibit the misuse of public funds and property for political or

personal use. (See e.g., Penal Code Section 424; see also, *Vargas v. City of Salinas* (2012) 200 Cal. App. 4th 1331; *Stanson v. Mott* (1976) 17 Cal.3d 206; *League of Women Voters v. Countywide Crim. Justice Coordinating Com.* (1988) 203 Cal.App.3d 529.)

In this case, the question of whether the proposed expenditures are lawful expenditures of public moneys is outside the scope of the Act. In addition, you have provided no indication that a private donor has made payments to the agency to fund the proposed expenditures. Assuming that the expenditures are lawful and not directly or indirectly paid by a private donor, the payments are not considered gifts for purposes of the Act.

For purposes of the Act's gift provisions, payments made to an official that *are not* lawful expenditures of public moneys are personal gifts to the officials from the city under Regulation 18944.3. In addition, in some circumstances, where money is actually received from a private donor and given to the city as a means to benefit certain officials, it may still be considered a gift to those officials. (See Regulation 18944.)

*2. MWD's directors are expected to sponsor inspection trips, including choosing or participating in choosing the guests for the trips. Does the directors "control over invitations make the guests" travel costs attributable to the directors as gifts?*

*3. What if a MWD director invites a family member as a personal guest on the trip? Are the guest's travel costs attributed as a gift to the director?*

*4. What if a public official guest is another MWD director and brings a travel companion of his or her choosing?*

2 - 4. As stated above, with limited exceptions, the Commission does not regulate the use of agency funds nor determine whether it is permissible to use agency funds for travel expenses of an agency official and/or a personal guest. Moreover, the fact that the MWD member selects the recipient does not change this conclusion. It is the agency's responsibility to determine whether or not the expenditure is lawful in consideration of the circumstances surrounding the expenditure. So long as the payments are lawful expenditures, the payments are not gifts.

***B. Questions Regarding gifts from MWD to local public officials not affiliated with MWD.***

*5. Inspection trip participants include local public officials not affiliated with MWD. Do they have to report the travel costs associated with the inspection trips?*

The Commission does not generally respond to requests about an official's duties submitted by third parties. Generally, only the receiving official and his or her authorized representative are able to request advice. However, we note that MWD has obligations under the Act with respect to the making of gifts. Section 89521 provides: "Any person who *makes or receives* an honorarium, gift, or expenditure in violation of this chapter is liable in a civil action brought by the Commission for an amount of up to three times the amount of the unlawful honorarium, gift, or expenditure." Therefore, we can provide general assistance on your questions.

Yes. Under Section 89506(a)(2) the payments for an inspection trip to officials not affiliated with MWD are reportable but not subject to limits. Section 89506 is an exception to the gift limits of the Act, however, the payment is still considered a gift to the official for purposes of reporting and disqualification. In order for a travel payment to qualify under Section 89506 the receiving official must meet two requirements:

“(a) The travel must be reasonably related to a legislative or governmental purpose, or to an issue of state, national, or international public policy, and

“(b) The travel must be provided by a government, a governmental agency, a foreign government, a governmental authority.”

The payment in question appears to meet the requirements of the statute. Accordingly, the payments must be reported by officials not affiliated with MWD on their statement of economic interests but are not subject to the \$460 per year gift limits.

You have not provided sufficient facts to demonstrate that the nonaffiliated official is attending the “inspection” in performance of his or her official duties, or are that the tour is otherwise connected to the receiving official’s agency. These facts would be required to determine if the exception for certain *inter-agency* payments for travel in Regulation 18950(c)(2) applies or the exception for “informational material” in Regulation 18942.1.

“Informational material” means any goods or service that serves primarily to convey information and that is provided to the official for the purpose of assisting him or her in the performance of his or her official duties or the duties of the elective office he or she seeks. Informational material may include on-site demonstrations, tours, or inspections. Transportation provided to or in connection with an on site demonstration, tour, or inspection is also considered “informational material” when any of the following apply: (1) the transportation serves as the means by which the information is conveyed and is integral to the conveyance of the information, such as an aerial tour over an area; (2) the transportation is provided solely at the site of a demonstration, tour, or inspection, including to and from an area of that site that is legally inaccessible to the public; or (3) the transportation is to or from a site when there is no reasonable, publicly-available commercial transportation available to that site and the transportation provided is limited to the segment for which public transportation is not available. (Regulation 18942.1(c).)

Of course application of these exceptions is fact dependent and cannot be applied based on generalities. You may want to contact us for further advice about specific trips as they arise.

*6. Directors sometimes allow public official guests (local public officials not affiliated with MWD) to bring a travel companion of their choosing. If a guest is a public official and chooses to bring a travel companion, are the travel costs for the companion attributable as a gift to the public official?*

Generally, Regulation 18941(a) provides that a gift is both “received” and “accepted” by an official when the official knowingly takes actual possession of the gift or is provided the benefit of the gift, or takes any action exercising direction or control over the gift, such as redirecting the gift

to another individual. Thus, when an official is allowed to invite along a second person, the travel costs for the companion are attributable as a gift to the public official.

You also mentioned invitations made directly to a spouse of the receiving official (where the receiving official did not exercise discretion and control over the gift). Regulation 18943 provides:

“[A] payment provided to or for the use of a family member is a gift to the official under either of the following conditions:

“(1) There is no established working, social, or similar relationship between the donor and the family member that would suggest an association between the donor and the family member suitable or appropriate for making the type of payment provided to the family member.

“(2) There is evidence to suggest the donor had a purpose to influence the official. Evidence to suggest the donor had a purpose to influence the official exists in any of the following circumstances:

“(A) The payment is made to a family member of a state agency official by a donor who is a lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official’s agency.

“(B) The payment is made to a family member of a state or local government agency official by a donor, or the donor’s agent, if the donor is involved in an action or decision before the official’s agency, in which the official will reasonably foreseeably participate or in an action or decision in which he or she has participated within the last 12 months.

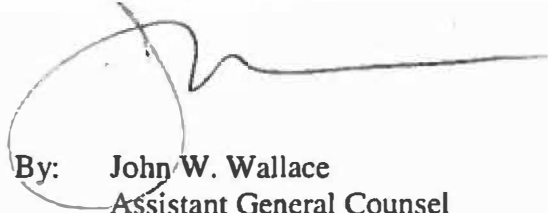
“(C) The payment is made to a family member by a person who has a contract with the official’s agency or by a person who engages in a business that regularly seeks contracts with or comes before the agency for the purpose of receiving a license, permit, or other entitlement and the official may reasonably foreseeably make or participate in a governmental decision, as defined in the Act’s conflict of interest regulations (Regulation 18702 et seq.), related to the person, or has participated in any decision related to the person within 12 months of the time the gift is made. . . .”

Under your facts, MWD would have no established working, social, or similar relationship with the spouse of the receiving official that would suggest an association between MWD and the spouse suitable or appropriate for making the type of payment provided to the family member. Therefore, the gift to the spouse is treated as a gift to the receiving official for reporting and conflict of interest purposes. Acceptance of the gift is only permissible if all the gifts from that source to the official during the calendar year are \$460 or less.

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

Sincerely,

Hyla P. Wagner  
General Counsel

A handwritten signature in black ink, appearing to read "John W. Wallace", is written over the typed name. The signature is fluid and includes a long horizontal stroke extending to the right.

By: John W. Wallace  
Assistant General Counsel  
Legal Division

JWW:jgl