



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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December 12, 2017

Robert G. Gottschalk  
Counsel for SMCCTA  
475 El Camino Real, Suite 300  
Millbrae, CA 94030

Re: Your Request for Advice  
Our File No. A-17-264

Dear Mr. Gottschalk:

This letter responds to your request for advice on behalf of Pacifica Mayor Mike O'Neil, Daly City Councilmember Mike Guingona, Millbrae City Councilmember Wayne J. Lee, and South San Francisco Director of Economic and Community Development Mike Lappen (collectively, the "Traveling Public Officials") regarding the gift provisions of the Political Reform Act (the "Act").<sup>1</sup> Please note that the Fair Political Practices Commission (the "Commission") does not act as a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate.

### QUESTIONS

1. Is the provision of roundtrip airfare by the San Mateo County China Trade Association (SMCCTA), a nonprofit organization under Section 501(c)(6) of the Internal Revenue Code, to each of the Traveling Public Officials to facilitate their attendance on the SMCCTA's trip to China, the purpose of which was to encourage investment and trade between China and San Mateo County, subject to the Act's \$470 gift limit?

2. Are actual transportation and related lodging and subsistence provided by local Chinese city governments to the Traveling Public Officials while the Officials were on the SMCCTA's trip to China subject to the gift limit?

### CONCLUSIONS

1. Yes. Because the SMCCTA is a 501(c)(6) nonprofit organization, it is not eligible for the exception to the gift limit for certain travel payments, advances, and reimbursements set forth in Section 89506(a)(2), and therefore its provision of roundtrip airfare for each of the Traveling Public Officials to attend the SMCCTA's trip to China was subject to the gift limit. Accordingly, each of

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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.

the Traveling Public Officials should “pay down” the airfare within 30 days of its receipt in order to avoid receipt of a gift in excess of the gift limit.

2. No. Local Chinese city governments are eligible for the gift-limit exception set forth in Section 89506(a)(2) because they are “foreign governments” for purposes of that exception. Those foreign governments provision of actual transportation and related lodging and subsistence to the Traveling Public Officials while they were in China was reasonably related to an issue of international public policy. Therefore, Section 89506(a)(2)’s gift-limit exception applies, and those foreign governments’ provision of actual transportation and related lodging and subsistence to the Traveling Public Officials while they were in China is not subject to the gift limit.<sup>2</sup>

## FACTS

The SMCCTA is a 501(c)(6) nonprofit organization. Its objective is to assist in communication between local governments and businesses in China and those in San Mateo County. It acts to encourage Chinese businesses to locate or invest in businesses in the County, and to assist local businesses which may wish to invest or locate in Southeastern China.

The SMCCTA invited the Traveling Public Officials to join local business persons for its trip to China from November 4, 2017 through November 13, 2017.<sup>3</sup> Other delegation members include Roy Tan of New York Life Insurance, Paul Seto of Liberty Bank, and Baron Suen of Time Advertising. The major objective of the trip to China is to encourage investment and trade between China and San Mateo County.

The delegation visited Beijing, Shijiazhuang, Hangzhou, and Chengdu. In these cities, the delegation met with local government officials, participated in the 2017 Overseas Chinese Elites Summit for Innovation and High Tech Forum, visited the Chengdu New Economic Zone and Entrepreneurs Forum, and toured the Hebei Luguan Optical Valley Science and Technology Zone.

The SMCCTA provided roundtrip airfares from San Francisco to China for the Traveling Public Officials. All remaining expenses, including transportation, lodging, and subsistence while on the trip were provided to the Traveling Public Officials by local Chinese city governments.

## ANALYSIS

### The Act’s Gift Provisions:

Section 82028(a) defines a “gift” as:

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<sup>2</sup> We note, however, that any other gifts made by the local Chinese city governments to the Traveling Public Officials other than the provision of “actual transportation and related lodging and subsistence” would be subject to the gift limit unless another exception applies.

<sup>3</sup> Regulation 18329(b)(8)(A) authorizes the Commission to decline to provide formal written advice if the requestor is seeking advice relating to past conduct. Because your request for advice was received on November 3, 2017, prior to the beginning of the SMCCTA’s trip to China, and because it addresses potential gifts that may be “paid down” pursuant to Section 82028(b)(2), we provide this advice prospectively in consideration of that rule.

“[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.”

To reduce improper influences on public officials, the Act regulates the receipt of gifts by public officials in three ways:

- **Gift Limit of \$470:** The Act places limitations on the acceptance of gifts by certain public officials. (Section 89503.) The current limit is \$470 from a single source in a calendar year. (Regulation 18940.2.)
- **Gift Reporting:** So that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift of \$50 or more (or gifts that aggregate to \$50 or more from the same source) received during the reporting period is disclosed on the official’s statements of economic interests. (Section 87207; Regulation 18940(d).)
- **Conflict of Interest Disqualification:** The Act prohibits any public official from making, participating in making, or using his or her official position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$470 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 and 87103(e).)

#### *Gifts of Travel:*

Under the Act, travel is presumed to confer some personal benefit on a public official. Thus, absent an applicable exception, travel costs paid for by a third party for which the official does not provide consideration of equal or greater value are generally gifts subject to reporting and regulation under the Act.

#### *Section 89506:*

Under some circumstances, however, although a travel payment, advance, or reimbursement may be a reportable gift, the gift limit is not applicable. Section 89506(a)(2) sets forth an exception to the Act’s gift limits for certain travel payments, advances, or reimbursements, and provides in pertinent part as follows:

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

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“(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 under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax exempt status under Section 501(c)(3) of the Internal Revenue Code.”

Thus, travel payments, advances, or reimbursements to a public official for actual transportation and related lodging and subsistence that are reasonably related to an issue of international public policy are not subject to the Act’s \$470 gift limit if the travel is provided by a 501(c)(3) nonprofit organization or a foreign government.

#### SMCCTA’s Travel Payments

The SMCCTA provided roundtrip airfares to the Traveling Public Officials that took part in its trip to China. The SMCCTA’s provision of the roundtrip airfares was reasonably related to issues of international public policy because the purpose of its trip to China was to encourage investment and trade between China and San Mateo County. However, the SMCCTA is a nonprofit organization exempt from taxation under Section 501(c)(6), rather than Section 501(c)(3), of the Internal Revenue Code. Therefore, the exception to the gift limit set forth in Section 89506(a)(2) is not applicable to the SMCCTA’s provision of roundtrip airfares to the Traveling Public Officials to attend the SMCCTA’s trip to China, and those roundtrip airfares are subject to the gift limit.

Section 82028(b)(2) provides that the term “gift” does not include payments which are not used, returned to the donor within 30 days of receipt, or delivered to a 501(c)(3) nonprofit entity without being claimed as a charitable contribution for tax purposes. Accordingly, each of the Traveling Public Officials may “pay down” the roundtrip airfare from SMCCTA within 30 days of its receipt pursuant to Section 82028(b)(2) to avoid receipt of a gift in excess of the gift limit.

#### Local Chinese City Governments’ Travel Payments

Local Chinese city governments covered all remaining expenses of the Traveling Public Officials that took part in the SMCCTA’s trip to China, including transportation, lodging, and meals while on the trip. Those governments’ provision of “actual transportation and related lodging and subsistence” was also reasonably related to issues of international public policy because the purpose of the SMCCTA trip to China was to encourage investment and trade between China and San Mateo County.

We have previously determined that a local government of a foreign country is a “foreign government” for purposes of Section 89506(a)(2)’s gift limit exception. (*Overmeyer* Advice Letter, No. I-14-118; *Reyes et al* Advice Letter, No. A-14-071; *Peterson* Advice Letter, No. A-97-554.) Therefore, the local Chinese city governments at issue are foreign governments for purposes of that exception.

Because the local Chinese governments' provision of actual transportation and related lodging and subsistence is reasonably related to issues of international public policy, and because those governments are foreign governments, Section 89506(a)(2)'s gift limit exception applies, and the transportation, lodging, and subsistence provided by those foreign governments to the Traveling Public Officials while in China are not subject to the Act's gift limits. However, we note that any gifts made by those foreign governments to the Traveling Public Officials other than "actual transportation and related lodging and subsistence" would be subject to the Act's gift limits unless another exception applies.

#### Conflict of Interest Disqualification?

As discussed above, a public official who receives gifts of \$470 or more may have a disqualifying conflict of interest under the Act. (Sections 87100 and 87103(e).) If gifts of \$470 or more were "provided to, received by, or promised to" the official within the 12 months preceding the governmental decision at issue, the official would have a financial interest in the source of the gifts under Section 87103(e). If the official has a financial interest in a decision within the meaning of Section 87100, the official must recuse himself or herself from taking part in that decision in accordance with Section 87105 or Regulation 18707.

The facts presented provide no indication of a forthcoming governmental decision before any of the Traveling Public Officials' respective cities that may have a disqualifying financial effect on those Officials' potential financial interests in SMCCTA or the local Chinese city governments as sources of the travel payments at issue. However, if such a decision arises, you should seek further advice providing all relevant facts.<sup>4</sup>

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

Sincerely,

Brian G. Lau  
Assistant General Counsel



By: Matthew F. Christy  
Counsel, Legal Division

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<sup>4</sup> We note that certain nonprofits that regularly organize and hosts travel for elected officials may also be required to disclose the names of certain donors to the Commission under Section 89506(f). However, because as you have not asked for assistance regarding the Act's reporting rules as applicable to SMCCTA, we do not address Section 89506(f) further.