



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 14, 2019

Leon J. Page
PO Box 1379
Santa Ana, CA 92702-1379

Re: Your Request for Advice
Our File No. A-19-191

Dear Mr. Page:

This letter responds to your request on behalf of Orange County Supervisor Doug Chaffee for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ Please note that we are not 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. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Does Regulation 18950, subdivision (c)(2), apply to a tour offered by the Metropolitan Water District of Southern California ("MWD") in the context of the Supervisor Chaffee's official duties and responsibilities as a member of the Orange County Board of Supervisors, so that the cost of related transportation, lodging and food would not be a reportable gift?

CONCLUSION

Yes. Supervisor Chaffee's official duties involve establishing water management policies, and the exercise of powers that are directly related to water use, and MWD provides a significant percentage of the drinking water used by two municipalities within Orange County, therefore Regulation 18950, subdivision (c)(2) applies, as the travel is related to inter-agency education and training.

FACTS AS PRESENTED BY REQUESTER

MWD Director Adam Ortega has invited Supervisor Chaffee to participate in an inspection trip of the Colorado River Aqueduct on October 26 and 27, 2019. MWD has offered to pay the costs of the tour participants' travel, including transportation to and from the aqueduct tour and related lodging and meals.

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.

You state that learning about water supply processes and challenges is part of an Orange County Supervisor's official job duties. The Orange County Board of Supervisors exercises powers that are directly related to water use. For instance, the Board of Supervisors exercises police power within unincorporated areas. Cal. Const. Art. XI, § 7. Water control is clearly within the police powers of a County. (*Sawyer v. Board of Sup'rs of Napa County* (1930) 108 Cal.App. 446, 449.) The Board of Supervisors considers all types of matters, whether it be land use decisions, planning applications, or specific water-related infrastructure projects that require an understanding of how much water is needed and from where that water can be obtained.

A specific example of the Board of Supervisors' central role in water management is found in Integrated Regional Water Management ("IRWM") plans for the County, which the Board adopts pursuant to the Integrated Regional Water Management Planning Act of 2002 ("IRWMP Act"). (See Water Code, § 10530, et seq.) An IRWM plan is a:

comprehensive plan for a defined geographic area, the specific development, content, and adoption of which shall satisfy requirements developed pursuant to this part. At a minimum, an integrated regional water management plan describes the major water-related objectives and conflicts within a region, considers a broad variety of water management strategies, identifies the appropriate mix of water demand and supply management alternatives, water quality protections, and environmental stewardship actions to provide long-term, reliable, and high-quality water supply and protect the environment, and identifies disadvantaged communities in the region and takes the water-related needs of those communities into consideration.²

Orange County's two IRWM plans are developed in collaboration with of the region's stakeholders (cities, local water district, sanitation district). The Board of Supervisors last reviewed and approved an IRWM plan on September 22, 2018.

Aside from IRWM plans, the Orange County Board of Supervisors also makes decisions regarding approval of projects and funding for the County's stormwater quality program. These decisions are directly related to requirements the County has under its stormwater discharge permits, issued under section 402 of the Clean Water Act (33 U.S.C., § 1442(p)). Many of these infrastructure projects are multi-purpose/multi-benefit in that they not only prevent discharge of pollutants into the waters of the United States, but also seek to address water supply issues through recapture and reuse/recycle or infiltration features. A good example is the Santa Ana Delhi Diversion, which was a joint venture between the County, the Orange County Flood Control District, and local cities. This project is designed to divert dry weather flows into the sanitary sewer (avoiding discharge into Newport Bay), and ultimately, after treatment, into the Orange County Water District groundwater replenishment system.

Additionally, you note that Supervisor Chaffee, in his role as a member of the Board of Supervisors, serves on the One Water, One Watershed Steering Committee of the Santa Ana

² Cal. Water Code, § 1054.

Watershed Project Authority. As the Authority states, “[t]he Steering Committee develops integrated regional water management goals and objectives for the watershed, oversees strategic decisionmaking, crafts and adopts programmatic suites of project recommendations, and provides program advocacy necessary to optimize water resource protection for all.”³ Supervisor Chaffee also serves on the Santa Ana River Flood Control Protection Agency. That agency:

collectively and through individual members communicates the importance of the Santa Ana River flood control improvements to its Orange County Congressional delegation ... [the agency] also communicates with the Orange County State Delegation and the State Department of Water Resources to reimburse the [Orange County Flood Control District’s (“OCFCD”)] for the State’s share of the project costs. SARFPA also supports the efforts of the OCFCD to have the 100-year Santa Ana River floodplain amended by the Federal Emergency Management Agency (“FEMA”) resulting in the reduction of insurance premiums and, in many cases, the removal of mandatory flood insurance requirements.⁴

The Board of Supervisors appointed Supervisor Chaffee to his positions on both the One Water, One Watershed Steering Committee and the Santa Ana River Flood Control Protection Agency on January 29, 2019. You also note that two municipalities within Orange County receive water from MWD. The City of Anaheim reports it receives approximately one-third of its water from MWD, while the City of Fullerton reports it receives approximately one-fourth of its water from MWD.

ANALYSIS

Gifts

A gift is defined under 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 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,” while Section 82028(b)(1) states that the term “gift” does not include “[i]nformational material such as books, reports, pamphlets, calendars, or periodicals. No payment for travel or reimbursement for any expenses shall be deemed “informational material.”

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

- First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$500 from a single source in a calendar year. (Section 89503.)
- Second, 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

³ <https://sawpa.org/owow/owowgovernance/>.

⁴ <http://www.ocflood.com/civicax/filebank/b1obdload.aspx?blobid=33198>

calendar year are disclosed on the officials' statements of economic interests. (Sections 87200 - 87210.)

- Third, 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 \$500 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).)

Under the Act, any travel is presumed to confer some personal benefit on a public official. Consequently, transportation, lodging and food paid for by a third party generally are reportable gifts and, absent an exception, (Section 82028) subject to the gift limit and conflict of interest provisions of the Act.

However, as pertinent to the facts provided, Regulation 18950(c) contains an exception for certain payments by a governmental agency. It provides:

(c) Exceptions: In addition to the exceptions to the definition of gift set forth in Regulations 18940 through 18946.6, the following gift exceptions apply to travel payments:

[(P)] ... [(P)]

(2) Any payment for travel received from a state, local, or federal government agency and related per diem expenses for education, training, or other inter-agency programs or purposes, is not a gift or income to the official who uses the payment.

Regulation 18950(c)(2) has not been applied frequently. According to *Arens Advice Letter*, No. I-14-125:

Regulation 18950(c)(2), on the other hand, was intended to carve out a more limited exception by which a payment would not be considered a gift or income under limited circumstances. In essence, that exception recognizes that in some circumstances money is exchanged between agencies so that an official may perform his or her job. These transactions were never intended to be reportable or potentially disqualifying gifts or income to the official because the payments were used to conduct agency business and not to provide a personal benefit to the official.

As mentioned, the trip in question will be educational for the attendees and related to policy issues. You note that the Board of Supervisors plays a central role in establishing water management policies, which includes land use decisions, planning applications, or specific water-related infrastructure projects that require an understanding of how much water is needed and from where that water can be obtained. Supervisor Chaffee serves on the One Water, One Watershed Steering Committee of the Santa Ana Watershed Project Authority, which involve regional water management policy making. The trip will involve policy issues that are relevant to Supervisor Chaffee in his capacity as a county supervisor, member of the One Water, One Watershed Steering

Committee of the Santa Ana Watershed Project Authority, and the Santa Ana River Flood Control Protection Agency. MWD also provides approximately one-third of Anaheim's water and approximately one-fourth of Fullerton's water, and both are located within Orange County. Therefore, the exception in Regulation 18950 applies, and the travel and related payments are not subject to gift limits or reportable.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Zachary W. Norton
Senior Counsel, Legal Division

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