



MICHAEL D. MARTELLO
Senior Counsel
mmartello@twtlaw.com

November 8, 2011

VIA EMAIL: aravel@fppc.ca.gov

Ann Ravel, Chair
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

Re: Agenda Item 25: Amendment of Regulations 18940 through 18950.4

Dear Chair Ravel and Commissioners:

I wanted to add my voice to the appreciative chorus who have worked with the Commission and its staff on the reorganization and rewrite of the gift regulations. I have participated directly with staff on this project and worked with Mr. Mason and the Leagues' FPPC Committee as well. I write separately to emphasize two macro points which sometimes get lost in the shuffle.

The first point is that we should not allow ourselves to get too frustrated if we cannot find a way to allow an innocent gift due to the need to achieve the greater goal of protecting and enhancing government integrity. Often the Commission finds itself in a dilemma where a very acceptable gesture (e.g., a corporate offer to make a gift for a non-profit fundraiser) gets caught up in a broad general rule, which makes the gesture a reportable gift and subjects the gift to the statutory gift limit.

We then craft an exception, which is the first step to making the rules more complicated and secondly often starts us on the slippery slope of more and more exceptions (e.g., hospitality) until we lose site of the reason for the rule in the first place.

A public official giving up the right to accept gifts from non-family members is okay. Many cities already prohibit the taking of gifts and when compared with the PRA's requirement that officials surrender some of their First Amendment rights, as well as their rights to privacy, strict rules on gifts seems to be an acceptable course.

IRVINE ■ SAN FRANCISCO

18101 VON KARMAN AVENUE, SUITE 230 ■ IRVINE, CALIFORNIA 92612-7132 ■ ☎ 949.679.6400 ■ 🏠 949.679.6405 ■ www.twtlaw.com

Ann Ravel, Chair
November 8, 2011
Page 2

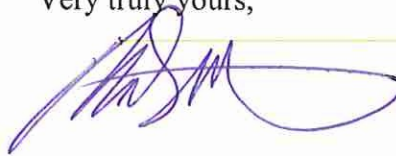
The second point is that I think we must avoid expanding and adding to Regulation 18942. Making a gift a "non-gift" places the Commission in the position of endorsing the exchange, removes the exchange from the disclosure and conflict regulations and seems to be the enemy of transparency. We often pursue this end to avoid calling something a gift which would then subject it to the gift limit (e.g., a week's stay at a friend's vacation home).

I think a better course is to require disclosure and if the gift cannot be valued below the gift limit, that we seek a legislative change to sanction the exchange.

In that vein, it may be that we need to have a class of exchanges other than gift, non-gift and income which would allow the reporting of exchanges which are non-threatening to the goals of the Act, not subject to the gift limit, but in some cases are still reportable.

Thank you for considering these thoughts.

Very truly yours,



Michael D. Martello
Senior Counsel

c: William Lenkeit (via email: blenkeit@fppc.ca.gov)

126855