



December 7, 2011

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

RE: Agenda Item 22: Amendment of Various Gift Regulations

Dear Chair Ravel and Commissioners:

On behalf of the League of California Cities City Attorneys FPPC Committee, I submit this letter for comment on the above-referenced agenda item. Our Committee has worked hard over the past several months in support of the Commission's efforts to improve and clarify the gift regulations. We have participated in IP meetings and telephone conferences with your staff to provide input to and suggestions on draft revisions. We have also sought the advice of ethics staff from some of the larger cities, and recently met with the California Political Attorneys Association on this subject to share our interests and perspectives with that organization. Finally, we participated in your consideration of a number of the proposed gift regulation amendments adopted at your November meeting. We appreciate your efforts in this matter and the consideration you have given our comments and suggestions. We offer the following comments on the remaining amendments that you will be considering at your December 8 meeting.

Regulation 18942(a) (13) [p.6, lines 4-6]

As you may recall, the proposed language for this exception generated a fair amount of discussion at your November meeting. In our committee's view the proposed language remains too ambiguous as to the type of contests, competitions, and games of chance that would be considered "bona fide" and "not related to the official's status." We believe we are in agreement with commission staff about what activities the rule should address, and offer the following suggested alternative:

"Except as provided in 18944.4, a prize or award received in a legal contest, competition, or game of chance, open to the public and not directed to a group predominantly

consisting of public officials. A price or award that is not reported as a gift shall be reported as income.”

Regulation 18942(a) (17) (C) [p.7, lines 13-15]

In comparing this exception to the exception proposed in subsection (a) (18), we do not believe this exception is necessary. Under the proposed language gifts from “long term, close personal friends” would not be treated as gifts, unless the person providing the gift is a lobbyist, or it is reasonably foreseeable that the official receiving the gift would be making decisions that might financially impact the source of the gift. Under subsection (a)(18), a gift made by a person meeting those criteria would also be exempt from the gift rules, since it is clear the gift is made because of “an existing personal relationship,” and there can be no evidence that the official receiving the gift will participate in decisions that might financially impact the person making the gift. Because the scope of (a) (18) is slightly broader than the exception provided in (a) (17) (C) (it also applies to gifts made because of a “business relationship” between the gift source and recipient), we suggest keeping that exception and simply deleting the proposed 18942(a) (17) (C).

Regulation 18942.1 [p.9, lines 20-22 and p. 10 lines 1-8]

Government Code section 82028(a) broadly defines the term “gift.” Subsection 82028(b) then provides a number of exceptions to this broad definition. Subsection (b) (1) provides that “informational material” shall not be considered a gift; however, this subsection also provides that “[n]o payment for travel...shall be deemed “informational material.” Our committee is concerned that the broad language proposed in subsection (c) (1) would allow for travel payments expressly prohibited by the statute. We are aware that after discussion of this regulation at your last meeting, the Commission suggested the addition of the phrase “and is integral to” to subsection (c)(1); however, we believe this additional language provides very little additional guidance as to which transportation payments would be considered a gift, and which ones would not. Moreover, in reviewing the existing subsection (c), we believe the proposed revision is a solution in search of a problem. The existing language in subsection (c) acknowledges the value of on-site demonstrations and inspections to the work of public officials and allows for transportation that is on-site and part of the inspection or demonstration. The existing provision also allows transportation to the site when it is not commercially available. We believe this language strikes the appropriate balance between allowing the conveyance of information useful to the performance of public service, while prohibiting travel that is suspect from the public’s perspective and expressly prohibited by the statute this regulation is intended to implement.

In recent discussions with Commission staff, we have discussed a number of revisions proposed by staff to tighten the language of proposed (c) (1) even further to prohibit abuse. While we certainly appreciate staff’s efforts in this regard, we remain concerned about expansion of subsection (c) beyond the narrow terms stated in the existing language. In considering this regulation, it is worth revisiting the text of the statute. Section 82028(b) (1) states that “[i]nformational material *such as* books, reports,

pamphlets, calendars, or periodicals...” shall not be considered gifts (emphasis added). We do not believe this statute should be interpreted by regulation to include site fly-overs or any other travel (except as currently provided in the regulation) offered by third parties to help “inform” public officials.

Regulation 18946.2 [pp. 12-14]

While the committee supports the method to establish the value of attendance at the events described in the regulation, we do offer suggestions to simplify and clarify this regulation. In discussing this regulation with staff, we have been informed that the only difference in value received by an official attending an “invitation only” event [governed by subsection (b)] and an event where the official performs an “official or ceremonial function” [governed by subsection (d)] is the treatment of the value of the entertainment. If the official performs an official or ceremonial function, they do not include the pro rata share of the cost of entertainment. However, the language used to establish the value of food received in subsection (d) is similar to, but different than, the language used in subsection (b). This could create confusion and suggest that a different standard applies.

To resolve this issue, our committee would suggest deleting subsection (d), and adding the following to the end of subsection (b):

“Where the official is performing an official or ceremonial role at an invitation only event, the official need not include the pro rata share of the entertainment provided to the official [OPTION and their guest] in calculating the value of their attendance at the event.”

[If this suggestion is adopted the subsections following subsection (b) will need to be re-lettered (d) through (f), and the introductory clause to subsection (b) [at p.12, line 10] should be revised to read: “Except as provided in subdivisions (d) and (e) of this regulation...”]

In addition, our committee found the proposed language describing the calculation to determine pro rata share to be confusing (See p. 13, line 5.). We would suggest deleting the underlined phrase on line 5, and replacing it with the following: “...multiplied by 1 if only the official attends, and by two if the official attends with a guest.”

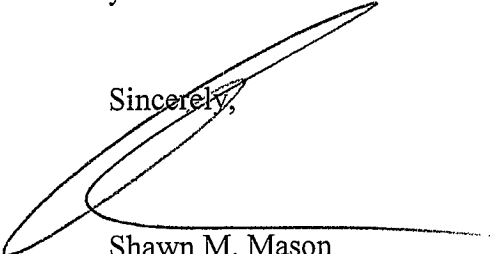
Regulation 18946.5(a) [p. 17, lines 5-10]

In the past our committee has expressed concerns about establishing the value of a gift of a commercial air travel by reference to the price of the ticket for the flight. This concern was based upon the fact that the price of an airline ticket fluctuates over time. In recent conversations with your staff, they have explained that this problem is resolved by application of the valuation rule in regulation 18946. As explained by staff, the value of the ticket would be the value on the date the ticket was promised to the official, or the value on the date received if it had simply be given without a previous promise. With this understanding, the committee supports the revisions to section 18946.5.

Having said this, our committee does have a concern about how this section will be applied as a practical matter. We suspect that a large number of public officials keep poor records about the gifts they receive, and go back to recreate the records when they prepare their Form 700's for submittal. If an official receives a gift of air transportation and has not contacted the airline to determine the cost of a ticket received on the date it was promised (as this regulation requires), there will be no way to determine that the following March when the official is preparing the Form 700. While this is not a reason to change the method of valuation, we would suggest that as part of its efforts to educate public officials about their duties under these new gift regulations, the Commission specifically explain how this regulation works, and what is expected of public officials receiving gifts of air travel.

In closing, I would like to again thank you and your staff for providing the opportunity to collaborate with the Commission in its important work to draft regulations which provide clear direction to the regulated community, while at the same time carry out and implement the policies adopted in the Act. We look forward to continuing to work with you in this effort and in the larger Regulation Clarification project.

Sincerely,



Shawn M. Mason
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Chair, League of Cities FPPC Committee