



---

OFFICE OF THE CITY ATTORNEY

330 West 20th Avenue  
San Mateo, California 94403-1388  
Telephone (650) 522-7020  
FAX: (650) 522-7021

August 21, 2013

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

RE: Agenda Item 46; Gift and Travel Payment Regulations

Dear Chair Ravel and Commissioners:

As chair of the League of California Cities City Attorneys Department FPPC Committee, I submit this letter for comment on the above-referenced agenda item. In its report, staff explains that the proposed regulation amendments complete the Commission's effort to clarify the gift regulations that was begun in 2011. In general, our committee supports the proposed amendments. The comments and suggestions offered below are in the nature of technical edits intended to further clarify and refine the concepts proposed by staff.

*Regulation 18944- Gifts to an Agency*

This regulation addresses payments donated to an agency by a third party that are ultimately "used" by a public official. If the payment meets the criteria spelled out in the regulation, it is not considered a gift to the public official. Subdivision (c) lists these criteria.

Subdivision (c)(2) provides that the selection of the official who will receive the benefit of the donation must be made by the agency head. This regulation goes on to say that the agency head may not themselves receive the benefit of the donation, "*unless payment is for an item that provides for general use by agency officials and the agency head is one of those officials who will have access to such use.*"

Members of our committee expressed some concern about the ambiguity of these terms, and sought guidance on when an item would be considered to be "for general use by agency officials." In particular, there was some question about whether a donor could provide an item (like a car) to be used by the city manager and city department heads, and whether the manager could then make use of the car without it being considered a gift to the manager.

In discussing this with Commission staff, it was staff's opinion that the circumstances above would not meet the intention of the exception for use by the agency head. Staff's view was that term "general use by agency officials" suggests availability for use by a broader range of agency officials, and that the donation should not be limited to a discrete group selected by either the donor or the official. Moreover, given the great variety of circumstances among state and local agencies, staff suggested that efforts to further define "general use" through precise numbers would not be helpful. I concur with staff's view on this point, and do not suggest alternative language. I raise the issue in this letter to help illustrate the intent of this language for those applying this regulation in the future.

#### *Regulation 18950-Travel Payments*

The proposed regulation would serve as an introduction to the series of regulations addressing travel payments made by third parties for use by public officials. Subdivision (a) describes the payments regulated in the 18950 series, and then goes on to define a number of terms for the purposes of the series. Our committee would suggest moving the definitions portion of this subdivision to a new subdivision (b) so that the definitions stand alone, and re-labeling the subdivisions that follow. We believe this will make the whole regulation easier to read and comprehend.

In addition, subdivision (d) is proposed to be added to allow an official to offer transportation to another official attending an event at which both officials are attending as representatives of their respective agencies without the transportation being considered a gift to the official riding along. The proposed language indicates that the officials would both be making an "appearance" at the event, which connotes more than simply attending the event. I discussed this with staff, and staff agrees that this limitation is not intended. Staff will suggest alternative language that I believe will address this concern.

#### *Regulation 18950.1- Payments for Official Agency Business*

##### Subdivision (b)- meal payments

The proposed regulation would describe the circumstances under which payments made by third parties for travel in connection with official agency business would not be considered a gift to the traveling official. Subdivision (b) provides that there be no direct payment from the donor to the traveling official. Our committee found the provisions relating to the payment for food to be confusing. While it is clear that an official can accept meals provided to all attendees at an event the official is attending, how other meals are addressed was unclear. I have discussed this with staff, and believe that alternative language will be provided that will clear up this confusion. Conceptually, an official will be able to have their travel connected meals paid for by the donor so long as the payment is made to the official's agency and not the official.

#### Subdivision (c)(5)- training received by an official

Subdivision (c) contains a list of activities that are considered to be "official agency business" for which payment may be made by a third party. Subdivision (c)(5) provides that a third party may provide travel payments in connection with "training directly related to the official's job duties and the payment is provided by an *educational organization* formed for the purpose of providing such training." Our committee was concerned about the undefined term, "educational organization," especially in the context of an official whose job duties are broad and varied. This concern might be addressed by adding the term "bona fide" before "educational organization" to dissuade those who might see this provision as an opportunity to do mischief. [The term "bona fide" has been used to modify other exceptions. See Reg. 18942(a)(17)(A).]

#### Subdivision (c)(6)- working groups

Subdivision (c)(6) allows an official to accept a meal while they are attending a working group meeting when the official's agency is "required" to provide a representative. This suggests that the official's agency is under some legal obligation to provide a representative to the working group, a circumstance that would likely never occur. Our committee suggests that the word "required" be replaced with the word "requested." It is not uncommon for working groups to be formed, and agencies are requested to provide knowledgeable officials to aid in the work of the group. Allowing such officials to accept a meal offered in connection with a working group meeting seems reasonable. I have discussed this issue with Commission staff, and believe staff will provide alternative language to address this issue.

#### Subdivision (d)- Selection of Recipient of Donated Payment

Subdivision (a)(3) provides that the selection of the official who uses a donated payment is to be made by the employer agency "as provided in subdivision (d)." However, subdivision (d) merely repeats that the employer shall select the recipient of the payment without providing any guidance on how this is accomplished. I have discussed this with Commission staff, and understand that the intention is that the selection is to be made in the same manner as it would be made if the travel expense was being paid with agency funds. To make this clear I would suggest that the following sentence be added after the first sentence in subdivision (d): "This selection shall be made in the same manner and by the same official that would approve the travel payment if it were to be paid by the agency."

#### Subdivision (h)(1)- Payments for 87200 filers

As staff explains in its report, the existing regulations do not allow for travel payments to agencies when the traveling officials are elected officials or other 87200 filers. The proposed subdivision (h)(3) is intended to allow for such payments under circumstances that are more limited than those for payments provided to other officials. While our

committee does not object to this policy decision, we do have concern about the manner in which these limiting circumstances are described.

The proposed regulation would allow travel payments to 87200 filers if they are: (1) "directly related to the officials public duties," (2) "for a purpose that would otherwise be paid for with the agency's funds," and (3) "are authorized in the same manner as" travel payments using the agencies own funds. These limitations seem very similar to the limitations in subdivisions (b) through (e) above. Thus, it would be very difficult for our members to discern when a payment that would be allowed for a designated employee would not be allowed for an 87200 filer, and to provide guidance to officials on these questions.

I have discussed this concern with Commission staff. Staff recognizes the concern, and is considering whether alternative language will be provided to address it.

### *Conclusion*

In conclusion, I would like to thank Commission staff for its efforts in reorganizing and clarifying the travel payment regulations. We believe the proposed amendments when considered along with the gift regulation amendments adopted in 2011, significantly improve this area of regulation. I would also like to recognize Senior Counsel Bill Lenkeit for his detailed review of the history and evolution of these regulations in his staff report. These materials will be very helpful to practitioners in years to come to serve as legislative history on these amendments. This history will greatly assist our members in determining what is intended by these regulations so that we can provide accurate counsel to our clients.

I hope you find these comments helpful in your deliberations on this matter.

Sincerely,



Shawn M. Mason  
City Attorney of San Mateo  
Chair, League of California Cities City Attorneys Department FPPC Committee

cc: Zackery P. Morazzini, General Counsel  
Bill Lenkeit, Senior Counsel