

February 14, 2001

REPORT TO THE HONORABLE  
MAYOR AND CITY COUNCIL

GIFT RULES REGARDING BONA FIDE COMPETITIONS  
AND TRAVEL PAYMENTS MADE BY THE METROPOLITAN  
TRANSIT DEVELOPMENT BOARD

At the City Council meeting of January 16, 2001, the City Attorney's Office conducted a special briefing for the Mayor and Council members regarding gifts and their disclosure. During that briefing, Councilmember Madaffer asked that the City Attorney's Office research the question of what is considered a "bona fide competition," for purposes of the regulation which provides that prizes and awards received in a "bona fide competition" are not subject to the gift requirements. Additionally, Councilmember Stevens asked the City Attorney's Office to provide further information on the subject of travel payments made by the Metropolitan Transit Development Board [MTDB] to a member of the Board, and whether those travel payments should be treated as gifts.

Definition of Bona Fide Competition

California Code of Regulations, title 2, section 18946.5, provides:

A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as an official or candidate. A prize or award which is not reported as a gift shall be reported as income.

The Fair Political Practices Commission [FPPC] has issued a number of advice letters to officials which clarify the meaning of "bona fide competition" in this regulation. In one 1995 advice letter, the FPPC ruled that a "Woman of the Year" award received by an assemblywoman was a bona fide competition unrelated to her official status, and did not have to be treated as a gift, and was not subject to the gift limit. *In re Pritchard*, FPPC Priv. Adv. Ltr. A-95-094. In reaching that conclusion, the FPPC found it significant that there was a large pool of contestants, not limited to public officials, and an independent judging panel. The *Pritchard* advice letter also illustrates that a competition does not have to involve a random drawing to be considered a bona fide competition for purposes of section 18946.5.

Another FPPC advice letter on the subject of the bona fide competition exception ruled that a cruise won in a raffle by a councilmember at a League of California Cities event had to be

treated as a gift. *In re Pavlovich*, FPPC Priv. Adv. Ltr. A-95-391. In that letter, the FPPC noted that although a raffle is a bona fide competition, this event was only for public officials, therefore, the councilmember won the raffle in part because of his official status. For that reason, the exception for prizes received from a bona fide competition, not related to official status, would not apply, and the cruise must be treated as a gift, subject to the gift limit and disclosure rules for gifts.

These advice letters clarify what type of competitions are treated by the FPPC as bona fide competitions, not related to official status. Although the prize does not have to be awarded randomly, if it is the result of a judging decision, the judging panel must be independent. Additionally, a large pool of contestants makes it more likely that a competition is a bona fide competition, and the pool of contestants must include contestants who are not public officials.

Finally, it should be noted that although a prize or award which results from a bona fide competition is not treated as a gift, and not subject to the gift limit, the language of the regulation and the *Pritchard* and *Pavlovich* advice letters provide that such a prize or award must still be reported as income.

#### Travel Payments Made by MTDB for a Board Member

Councilmember Stevens asked this office to determine whether travel payments should be treated as gifts when they are made by MTDB for an official who is a member of the Board, traveling on Board business. In these specific circumstances, the travel payments are not subject to the gift limit, and do not need to be disclosed, because they are being made by a government agency for which the official is providing services equal or greater in value than the payments received.

Whether a travel payment is a gift or income depends upon whether the official receiving the travel payment is providing services equal or greater in value than the payments received. For purposes of the Political Reform Act [Act], a gift is defined as “any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received . . . .” Cal. Gov’t Code 82028. When an official who receives a travel payment is providing services to the agency making the travel payment equal or greater in value than the payments received, the payment does not fall within the definition of a gift, is not subject to the gift limit and does not have to be reported as a gift.

Additionally, because MTDB is a government agency, the travel payments would not need to be disclosed as income. Travel payments received from a state, local, or federal government agency, are excluded from the definition of “income” for purposes of the Act. Cal. Gov’t Code 82030(b)(2). A “local government agency” includes a county, city, or district of any kind including school district, or any other local or regional political subdivision, or any department, division, bureau, office, board, commission or other agency of the foregoing. Cal. Gov’t Code 82041. As a regional agency made up of elected officials from various cities in San Diego County, MTDB falls within this definition. Therefore, travel payments from MTDB, received by a member of the Board providing services to MTDB equal to or greater than the travel payments, are not subject to the gift limit, and are not required to be disclosed.

It should be noted that this analysis is specific to travel payments from MTDB to one of its Board members. Issues regarding travel payments from other sources should be forwarded to the City Attorney's Office for analysis on a case-by-case basis.

Respectfully submitted,

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City Attorney

LAF:jrl(043.1)  
RC-2001-7