

DATE: February 26, 1986  
TO: Charles G. Abdelnour, City Clerk  
FROM: City Attorney  
SUBJECT: Disclosure of Economic Interests

By memorandum of January 14, 1986, you describe a guest pass for Pacific Theaters and a courtesy pass for Mann Theaters. While you did not indicate the estimated value of these items or the frequency of use, you ask whether these items are reportable on your Form 730, State of Economic Interest.

Your question raises the distinction between disqualification and disclosure required by California Government Code sections 87100 and 87300 respectively and how passes are valued under each.

Section 87100 requires disqualification of public officials from making or influencing a governmental decision in which the official has a financial interest. As a public employee, you are a public official within the meaning of this section. Section 82048. For purpose of disqualification, a financial interest is defined in Section 87103 as follows:

Sec. 87103. Financial interest in decision by official.

An official has a financial interest in a decision within the meaning of Section 87100 if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his or her immediate family or on: ....

....

... (e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts

aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Hence in any governmental decision involving Pacific or Mann Theaters, you must disqualify yourself if the decision will have a material financial effect on the donor, intermediary or agent of the donor if the passes aggregate two hundred fifty dollars (\$250) or more in the twelve (12) months prior to the decision. The valuing of the passes is discussed infra.

Disclosure of financial interests is separately treated with the reporting requirements varying between those officials listed in Section 87200 and designated employees defined and listed in agency conflict of interest codes mandated by Section 87300 and requiring the reporting of "specific types of investments, interests in real property, and sources of income which are reportable ...." Section 87302(a).

Since you are not one of the officials listed in Section 87200, we must look to the conflict of interest code adopted under Section 87300 et seq. for your department on February 8, 1978. This document lists designated positions and disclosure categories from which the annual statements of economic interest (Form 730) flow.

You correctly note in your memorandum that the disclosure category (Category 1) requires only the reporting of "investments" which would exclude by omission other financial interest such as interests in real property and income. Such an exclusion, however, we believe renders this disclosure category inadequate for two reasons.

First there are certain mandatory provisions that must be in each conflict of interest code:

Sec. 87302. Required provisions

Each Conflict of Interest Code shall contain the following provisions:

(a) Specific enumeration of the positions within the agency which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest and for each such enumerated position, the specific types of

investments, interests in real property, and sources of income which are reportable. An investment, interest in real property, or source of income shall be made reportable by the Conflict of Interest Code if the business entity in which the investment is held, the interest in real property, or the income or source of income may foreseeably be affected materially by any decision made or participated in by the designated employee by virtue of his or her position.

(b) Requirements that each designated employee, other than those specified in Section 87200, file statements at times and under circumstances described herein,

disclosing reportable investments, interests in real property and income. The information disclosed with respect to reportable investments, interests in real property, and income shall be the same as the information required by Sections 87206, 87206.5 and 87207. The first statement filed under a Conflict of Interest Code by a designated employee shall disclose any reportable investments and interests in real property. An initial statement shall be filed by each designated employee within 30 days after the effective date of the Conflict of Interest Code, disclosing interests held on the effective date of the Conflict of Interest Code. Thereafter, each new designated employee shall file a statement within 30 days after assuming office, or if subject to State Senate confirmation, 30 days after being appointed or nominated, disclosing interests held on the date of assuming office or the date of being appointed or nominated, respectively. Each designated employee shall file an annual statement, at the time specified in the Conflict of Interest Code, disclosing investments, interest in real property and income held or received at any time during the previous calendar year or since the date the designated employee took office if during the calendar year. Every designated employee who leaves office shall file, within 30 days of leaving office, a statement disclosing reportable investments, interests in real

property, and income held at any time during the period between the closing date of the last statement required to be filed and the date of leaving office ....

As you can see, each time reportable interests are described the three (3) categories of investments, interests in real property and income are mentioned as required subjects of disclosure.

Secondly Section 87309 provides:

Sec. 87309. Approval and upholding code and amendments

No Conflict of Interest Code or amendment

shall be approved by the code reviewing body or upheld by a court if it:

(a) Fails to provide reasonable assurance that all foreseeable potential conflict of interest situations will be disclosed or prevented; ....

Clearly the goal of a conflict of interest code is to illuminate through disclosure all potential conflict areas so that the public will have confidence in the decision of public officials. Section 81001. It can hardly be claimed that potential conflict situations are avoided by requiring disclosure of investments in firms while income and real property from the same firms are excluded.

For purposes of reporting requirements, all gifts of fifty dollars (\$50) or more in value must be reported. Section 87302 specifically references Section 87207 which provides:

Sec. 87207. Income; statement; contents

(a) When income is required to be reported under this article, the statement shall contain, except as provided in subdivision (b):

(1) The name and address of each source of income aggregating two hundred fifty dollars (\$250) or more in value, or fifty dollars (\$50) or more in value if the income was a gift, and a general description of the business activity, if any, of each source;

(2) A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least two hundred fifty dollars (\$250) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but was not greater than ten thousand dollars (\$10,000), or whether it was greater than ten thousand dollars (\$10,000);

(3) A description of the consideration, if any, for which the income was received;

(4) In the case of a gift, the amount and the date on which the gift was received.

(Emphasis added.)

The only exception to this reporting provision is found in Section 82028(b)(2) where gifts which are not used and within thirty (30) days of receipt are returned to the donor or

delivered to a charitable organization without being claimed as a charitable tax deduction need not be reported.

Assuming then that the two (2) passes in question are (a) worth more than fifty dollars (\$50) and (b) not returned or delivered to a charity within thirty (30) days and claimed as a tax deduction, we conclude that the passes must be reported as gifts on Form 730, Statement of Economic Interest.

The value listed for the two (2) passes is left to the filer's good faith estimate of the fair market value of the gift. Section 82025.5; In re Opinion requested by Hopkins, 3 FPPC 107, 112 (1977). The Hopkins opinion gives guidelines on valuing passes to Disneyland, Angels season tickets and Mann Theater passes. In valuing such passes, the opinion focuses on whether or not such a pass could be purchased in the market place. If so the price would be the fair market value. If not, the maximum use per year should be considered along with a reasonable discount to induce purchase. In no event, however, is the actual frequency of use or value to the individual personally to be used.

In sum, we believe you should use the above guidelines in establishing a fair market value of these passes and that their value must be declared as gifts on Form 730. Secondly, Exhibit B of your conflict of interest code is inadequate and should be amended to include all investments, interests in real property and sources of income of any reportable interest. Suggested language for disclosure Category 1 is as follows:

Category 1: All reportable investments, interest in real property or source of income in any firm or entity that provides printing services in and around The City of San Diego, prints and publishes a newspaper with classified advertising in and around The City of San Diego or any firm or entity that provides printing services or furnishes classified advertising services to The City of San Diego.

JOHN W. WITT, City Attorney

By

Ted Bromfield

Chief Deputy City Attorney

TB:js:048.2.1(x043.2)

ML-86-22