

MEMORANDUM OF LAW

DATE: February 20, 1987

TO: Mayor Maureen O'Connor
FROM: City Attorney
SUBJECT: Reporting Requirements Flowing from an
Automobile Lease from Ford Motor Company

By memorandum of January 26, 1987 you outlined a program offered by the Governmental Relations Staff of the Ford Motor Company whereby they would lease a Lincoln Continental to the City for the exclusive use of the Mayor at a special price of \$308.33 per month which is substantially below the fair market rates for such vehicles.

In light of this situation, you ask:

1. If the lease and use of the automobile under the Ford Company Program would be considered a campaign contribution requiring disclosure by the FPPC?
2. If the lease and use of the automobile under the Ford Company Program would be considered a personal gift as defined by state or local statutes?
3. If the lease and use of the automobile under the Ford Company Program is considered a personal gift, can that categorization be mitigated by the Mayor reimbursing the City with the difference between the fair market value and the actual out-of-pocket lease rate?

Our correlated response to these questions follows.

1. THE LEASE AND USE OF SUCH A VEHICLE WOULD NOT BE CONSIDERED A CAMPAIGN CONTRIBUTION UNDER EITHER STATE OR LOCAL LAWS.

Both the Fair Political Practices Act (Government Code section 81000 et seq.) and the San Diego Municipal Campaign Control Ordinance (San Diego Municipal Code section 27.2901

et seq.) have synchronized definitions of contributions. However, both definitions require the donation, here the granting of a discount not generally extended to the public, to be for a political purpose. Under the administrative guidelines adopted to supplement the Political Reform Act, political purpose means "for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate" 2 Cal. Admin. Code 18215(a)(1).

We have no hesitancy in saying that the mere presence of a Lincoln Continental supplied by Ford furnishes no political statement. Rather it is designed to furnish an advertising

statement for Ford and not for the politician inside. Hence we find that a below fair market lease would not be a "contribution" and hence neither reportable under the Political Reform Act nor limited by the Campaign Control Ordinance.

2. WHERE A LESS THAN FAIR MARKET LEASE AND USE OF AN AUTOMOBILE IS MADE FOR THE EXCLUSIVE USE OF ONE PERSON, IT MUST BE CONSIDERED A PERSONAL GIFT.

While ordinarily the donor's intent and direction controls in determining to whom the gift is given, the Fair Political Practices Commission has issued an opinion in a highly similar situation. The Commission was asked to rule on whether a gift of services was accomplished when free private air transportation was furnished to a city councilman in San Jose. The Commission recognized that the statutory definition of "gift" (California Government Code section 82028) includes. . . . "a rebate or discount in the price of anything of value" Clearly a discounted fee in the leasing of a Lincoln Continental is included within the definition of "gift."

However, to whom the gift is given is not always clear and the issue was construed in the Commission's analysis.

There may be some situations, however, where surrounding circumstances show that the gift was made to the city only, without providing any significant or unusual benefit to the official. In such a case, the official would have no reporting obligation since whatever he receives, although free of charge to both him and the city, would be analogous to reimbursement for expenses or per diem from a state or local government agency, items which are not reportable. Section 82030(b)(2). While no immutable guidelines

can be cast for determining when a gift of this nature is a gift to the city only, and not the official, we would require it to satisfy at least the following four criteria:

1. The donor intended to donate the gift to the city and not to the official;
2. The city exercises substantial control over use of the gift;
3. The donor has not limited use of the gift to specified or high level employees, but rather has made it generally available to city personnel in connection with city business without

regard to official status; and

4. The making and use of the gift was formalized in a resolution of the city council (a written public record will suffice for administrative agencies not possessing the legislative power of adopting resolutions) which embodies the standards set forth above.

To the extent that the gift of free air transportation in the instant case satisfies the above standards it will not subject the city officials to any reporting obligation pursuant to the Political Reform Act. To the extent that these standards are not satisfied, however, the officials must report the receipt of such a benefit as a gift if its value is \$25 or more. It is our understanding that the free air transportation received by the San Jose city councilmember did not meet these four standards. It is therefore reportable on the official's Statement of Economic Interests if worth \$25 or more. Sections 82028 and 87302(b).

In re Opinion requested by Peter G. Stone, City Attorney, San Jose, 3 FPPC Ops. 52, 56 and 57 (1977)
Emphasis added.

While we have reservations about requiring all four (4) criteria to be met in determining to whom a gift is given, the official interpretation of governing statutes (here Government Code section 82028, definition of "Gift") is to be given great deference. *Thirteen Committee v. Weinreb*, 168 Cal.App.3d 528, 533 (1985). Hence unless the lease in question meets all four (4) criteria, it must be considered a gift.

3. THE LEASE OF AN AUTOMOBILE IS NOT A GIFT WHERE THE MAYOR REIMBURSES FOR THE DIFFERENCE BETWEEN THE DISCOUNT RATE AND THE FAIR MARKET VALUE.

The Political Reform Act defines gift in pertinent part as:

. 82028. Gift

(a) "Gift" means, except as provided in subdivision (b), any payment to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the

regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

Were the Mayor to reimburse the City for the difference between the fair market value rate and the paid rate, she would be receiving no discount on the car since the City would be paying Ford its set rate and the Mayor would contribute the difference to the City. Although the Mayor is still the recipient of the car (see above), she manifestly can show that, as to her, full consideration has been paid for the fair market value of the automobile and, as to her, she has received no rebate or discount within the meaning of California Government Code section 82028.

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By

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