

DATE: January 27, 1988

TO: Gloria McColl, Deputy Mayor  
FROM: City Attorney  
SUBJECT: Clarification of "Gift" Definition Under  
Political Reform Act

This is in response to your memorandum of January 11, 1988, addressed to Jack Katz, Chief Deputy City Attorney, requesting written confirmation of an oral opinion rendered by Mr. Katz to your aide, Jeff Marston, regarding whether your acceptance of air transportation by private aircraft to Atlanta, Georgia, to conduct City business constitutes a "gift" to the City or to yourself under the Political Reform Act. Mr. Katz opined that under the facts given, the recipient of the gift would be the City, not yourself. This memorandum confirms that oral opinion.

#### BACKGROUND FACTS

The following facts were provided in your memorandum and supplemented by information provided orally to Mr. Katz.

You and Mr. Ernest Hahn, among others, are duly appointed members of the City's U.S. Olympic Training Center Site Ad Hoc Task Force ("Task Force") established in part to bring a United States Olympic Training Center to San Diego. Mr. Hahn invited you and other members of the Task Force to fly on his private jet to Atlanta, Georgia, for a meeting on January 15, 1988, with United States Olympic officials in furtherance of that goal. If Mr. Hahn had not asked you to fly in his private plane, the City would have paid the round trip air fare to Atlanta. (As a side note, the City would also have paid for Mr. Hahn's round trip ticket to Atlanta for the same meeting if he had not taken his private plane.) You contemplated doing only City business while in Atlanta.

#### LEGAL ANALYSIS

You query whether the free airplane ride to Atlanta was a gift to the City or to yourself and, if the latter, an item you must report under the Political Reform Act ("PRA").

It is clear that free air transportation is a gift under the PRA. Government Code Section 82028 defines "gift" to include "any payment to the extent that consideration of equal or greater value is not received. . . ." "Payment" is defined to include "a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services, or anything else of value, whether tangible or intangible." Government Code Section 82044.

The statute and the regulations adopted thereunder by the

Fair Political Practices Commission ("FPPC") provide no guidelines or standards for determining who is the recipient of a gift under the PRA, the public entity or the public official. The FPPC, however, has issued a formal opinion on when free private air transportation constitutes a gift to a city or to a public official. In re Opinion requested by Peter G. Stone, City Attorney, San Jose, 3 FPPC Ops. 52 (1977). In that case the Commission found that free air transportation constituted a gift to the councilmember, not the City. The facts in that case differ, however, from the present circumstances.

In the Stone case a city councilmember initiated the request for the flight and the donor of the flight had no other intention of flying to that destination that day. In addition, the donor, a local construction firm, had business currently pending before the city at the time of the councilmember's trip.

Although the FPPC issued a ruling finding that in this instance the free air trip was a reportable gift for the councilmember, the Commission noted in its analysis that there are no clear guidelines for determining when a gift of this nature is a gift only to a public entity and not to an official. This FPPC opinion is discussed at length in a memorandum of law issued February 20, 1987, to Mayor O'Connor, copy attached, and will not be discussed here. We merely point out here that, under the statute and the FPPC opinion cited above, the determination turns on the particular facts.

In the present instance we find that Mr. Hahn's gift is a gift to the City not to you. First, you and Mr. Hahn are both "public officials" who serve on a duly constituted City task force. Second, the meeting was clearly for City purposes and you

did not intend to conduct other business while in Atlanta. Third, Mr. Hahn himself planned to travel to Atlanta on the same day, since he was to attend the same meeting for the same City purpose. Fourth, he initiated the request; you did not. Fifth, to our knowledge, Mr. Hahn's offer of transportation was to facilitate the work of the Task Force and not to gain personal advantage. Sixth, you were not the sole invitee from many other Task Force members; there were others who went as well.

Clearly, the City is the entity to benefit in this transaction. Although you may receive some minor intangible benefits from the private plane ride, as opposed to public transportation, we find these benefits do not transform this gesture into a gift for yourself instead of a gift to the City. Therefore, you need not report this plane ride as a gift under the Political Reform Act.

JOHN W. WITT, City Attorney

By  
Cristie C. McGuire  
Deputy City Attorney

CCM:ps:012(x043.2)  
Attachment  
ML-88-6