

MEMORANDUM OF LAW

DATE: June 21, 1989

TO: Benjamin Dillingham, III, Chief of Staff to
Mayor Maureen O'Connor

FROM: City Attorney

SUBJECT: Automobile Lease From Ford Motor Company

By memorandum of June 16, 1989 complete with a Reader article from June 15, 1989, you ask for confirmation of our prior advice dealing with a less than fair market value lease with the Ford Motor Company. Our advice on each of the areas of contribution, conflict of interest, and gifts was addressed in a February 20, 1987 Memorandum of Law (attached) which remains valid today.

Contrary to an inference that our advice has changed, the facts have changed. The Memorandum of Law was expressly predicated on receipt of the car "for the exclusive use of the Mayor" (February 20, 1987 Memorandum, paragraph 1, emphasis added). The receipt of the car is now a lease to The City of San Diego (not the Mayor) and has no restriction as to exclusive use. In fact, both the City Manager's office and Financial Management confirm that while the vehicle will be used primarily by the Mayor, it will also be used by other City officials in carrying out their official duties.

With such a substantial change in facts (exclusive vs. non-exclusive), no inconsistency is raised at all with Mr. Katz's advice that any donation is made to The City of San Diego and not to a specific official. The elements of a gift both as enunciated by the FPPC and the common law focus on the donor's intent, to whom delivery is made and by whom delivery is accepted. *Haynes v. White*, 47 Cal.App.549, 553 (1920). In each instance, the donation of the less than fair market value lease is to the City and not to any one official. While the car will be used by the Mayor, the donor has not restricted its use to the Mayor.

Contrary to any inference of inconsistency, our advice remains firm that the exclusive use of a less than fair market

value lease would render same a gift; non-exclusive use does not. As aptly put by the FPPC, there are no "immutable guidelines" on when a gift is one to the City or to an individual, yet the test of exclusivity is a major determining factor. As this was the critical factor in both my and Mr Katz's advice, we again confirm it by means of this memorandum.

JOHN W. WITT, City Attorney

By
Ted Bromfield
Chief Deputy City Attorney

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Attachment
ML-89-66