

MEMORANDUM OF LAW

DATE: March 19, 1990

TO: John Lockwood, City Manager

FROM: City Attorney

SUBJECT: Declaration of San Diego Arts Festival Tickets
and Reception Invitations on Annual Economic
Interest Statements (721 and 730 Forms)

Your memorandum of February 27, 1990, to Curtis Fitzpatrick has been referred to me for response. You asked which, if any, of the following San Diego Arts Festival (Festival) events, held in October through December, 1989, need to be declared on the annual Statements of Economic Interest (S.E.I.'s).

1. Complimentary tickets to events for which admission was charged to the public, e.g., "Boris Godunov" by the San Diego Opera, "Brothers & Sisters" by the Maly Theatre of Leningrad, Symphony performances, San Diego Repertory Theater's "Slingshot", and the Georgian State Singing and Dancing Ensemble.
2. Receptions associated with an event, e.g., Museum of Art dinner, Folk Arts Reception at B Street Pier, and opening night opera dinner.

We understand from your secretary, Donna Cottingham, that you are asking these questions on behalf of both the City's elected officials and other City employees.

To answer your questions, we obtained further facts about the tickets and events from San Diego Festival, Inc.'s (Corporation) contract files and from telephone communications with Bruce Herring, the Corporation's Executive Director, and Sal Giametta, Assistant to the Mayor on Festival and Corporation matters.

By way of background, we note that the Corporation is a non-profit corporation wholly owned by the City and formed by the City to organize and present the San Diego-Soviet Arts Festival held in San Diego from October, 1989, through January, 1990. The

Corporation entered into contracts with local arts organizations to present the various Festival events and exhibits which the Corporation brought to San Diego from the U.S.S.R., (e.g., the Old Globe for production of the play "Brothers and Sisters" and for presentation of the Tbilisi Marionettes; San Diego Opera for production of the opera "Boris Godunov"; San Diego Museum of Art for exhibition of Faberge Eggs). The Corporation provided money to each presenting organization to assist in presentation of the event or exhibit. In accordance with those agreements, fees for

admission were charged to the public to most events and exhibits. Fees for events ranged from \$5.00/ticket (e.g., to see the Faberge Eggs at the Museum of Art) to \$75.00/ticket (e.g., to see the play "Brothers and Sisters" at the Old Globe Theater). The Corporation specifically reserved several tickets to Festival events for its own use and free of cost (up to 300 tickets, in some instances). These tickets were distributed to various City officials and employees, among others, by or at the direction of the Mayor acting in her capacity as President of the Corporation.

Invitations to receptions associated with various Festival events were handled in a different manner. Tickets to these events were not specially reserved by the Corporation in its contracts with local presenting organizations. Rather, when an organization held a reception related to the Festival, the organization asked the Corporation, through its Executive Director and President, to provide a list of persons whom the Corporation wished to invite. The list provided by the Corporation included Councilmembers and other City officials and employees. The number of invitations ranged from a handful to several, depending on the size and nature of the reception or event.

Presenting organizations also invited other guests to their receptions, usually supporting members of their organizations (e.g., "Friends of the Museum"). In most instances, there was no stated value on the face of the invitation to a particular reception or event. The invitations were mailed or distributed by the presenting organizations to persons selected by the Corporation as well as their own guests to avoid Proposition 73 "mass mailing" restrictions placed on the Mayor. (See Government Code section 89001, as amended June, 1988; 2 Cal. Code of Regulations section 18901.)

LEGAL ANALYSIS

The underlying question in your memorandum is whether tickets or invitations to Festival-related events must be disclosed as

"gifts." Under the Political Reform Act of 1974 (the Act), the Mayor, Councilmembers, City Attorney, City Manager, and Members of the Planning Commission must disclose certain economic interests, including gifts, on "721" S.E.I. forms provided by the Fair Political Practices Commission (FPPC). (Government Code sections 87200, 87202 and 87207.) For ease in reference in this memorandum, the individuals identified in Government Code section 87200 will be referred to below as "elected officials," even though some of the individuals are not elected, but are appointed.

"Designated employees," as defined in Government Code section

82019, must also disclose receipt of gifts on "730" S.E.I. forms provided by the FPPC, but only to the extent that disclosure is required by the applicable City department's or agency's Conflict of Interest Code adopted pursuant to Government Code section 87300 et seq. Analysis of each potentially applicable Conflict of Interest Code is beyond the scope of this memorandum. If, however, you have a question regarding a specific "designated employee," we will address that issue in a separate memorandum.

As a general rule, however, both elected officials and designated employees must disclose gifts that are valued at \$50 or more, unless an exception applies. (Government Code sections 87207 and 87302.) The issue here is whether the tickets valued at \$50 or more to Festival events and the invitations to Festival-related receptions and dinners valued at \$50 or more must be declared as "gifts" in the S.E.I.'s for calendar year 1989, or whether they fall within an exemption. If tickets or invitations are valued at less than \$50, then they do not need to be declared.

The FPPC has developed a detailed set of rules governing gifts, which are located at 2 Cal. Code of Regulations sections 18726 through 18726.8. A copy of these regulations is attached for your reference. Regulation 18726 governs valuation of gifts if the valuation cannot be readily ascertained. This rule will apply to those invitations that have no stated value. As shown below, however, valuation should not be an issue, since the invitations are exempt from disclosure for other reasons.

Regulation 18726.7 governing passes and tickets given to an agency applies to answer the questions you presented. Under Regulation 18726.7(c), tickets which provide admission to facilities or other tangible or intangible benefits and which are provided to an agency official are not considered gifts within the meaning of the Political Reform Act if: 1) the tickets are

provided to the agency as part of the contract for the use of the facility; and, 2) the use of the tickets is regulated by an officially adopted policy of the agency. In the present instance, the Corporation specifically reserved several tickets to gain access to Festival events and facilities (e.g., Faberge Eggs, "Brothers and Sisters" play) for its own use in each of the contracts with the local presenting organizations. The complimentary tickets were provided to the Corporation, not individuals, and therefore the first criterion for exemption is met.

The second criterion for exemption is also met because the Corporation, not the donor, by virtue of the policy articulated in the contract language, maintained control over the

distribution of the tickets to these events. Therefore, we find that the tickets to Festival events are granted an exception to the rule requiring disclosure under FPPC Regulation 18726.7(c).

For a different reason we find that invitations to receptions related to the Festival are also exempt from disclosure, as discussed below. Regulation 18726.7(a) allows an exemption for disclosure for tickets or passes to events whenever:

(1) The donor gives the tickets or passes to the official's agency, through a responsible official of the agency, for the purpose of distributing the tickets or passes and the use; and

(2) The tickets or passes are not earmarked by the donor for a particular official; and

(3) The agency retains a written public record of the terms under which the tickets were accepted by the agency and the terms under which the tickets or passes were distributed and to whom they were distributed.

It is our understanding that the invitations to various Festival-related receptions were given to the Corporation's Executive Director and to the Mayor, in her capacity as President of the Corporation, for distribution. The list of "donees" was prepared by the Corporation, not by the presenting organizations. Although the invitations were mailed and distributed by the presenting organizations, those organizations did not "earmark" the invitation for particular donees. Rather, they used the list provided by the Corporation. The invitations were mailed by the presenting organizations to avoid the constraints of Proposition 73 "mass mailing" regulations which would have been created if

the Mayor had sent the invitation herself, either in her capacity as Mayor or in her capacity as President of the Corporation.

Assuming it has not already done so, in order to perfect the exemption from disclosure under Regulation 18726.7(a), the Corporation should have a written record of the terms under which each of the reception invitations were accepted and distributed, as well as a list of the donees.

CONCLUSION

We conclude that neither the tickets to Festival events nor invitations to Festival-related receptions must be disclosed by elected officials on their 721 S.E.I.'s or by designated employees on their 730 S.E.I.'s.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:048.2.1(x043.2)

Attachments

cc Bruce Herring, Executive Director
San Diego Festivals, Inc.

ML-90-38