

MEMORANDUM OF LAW

DATE: April 28, 1992

TO: Sal Giametta, Assistant to the Mayor

FROM: City Attorney

SUBJECT: Gift Passes from Motorola Inc.

Your memorandum of April 8, 1992, to Assistant City Attorney John Kaheny has been referred to me for response. You essentially ask whether gift passes offered by Motorola Inc., to the America's Cup Host Committee for a ride on a yacht to watch the America's Cup final races are: 1) disclosable economic interests on the Mayor's Statement of Economic Interest ("SEI"); 2) a basis for disqualifying the Mayor from consideration of upcoming matters on the docket affecting Motorola Inc.

Following delivery of this memorandum, you provided several important facts necessary to answer the questions, as follows: The passes will be for a day's outing on a yacht called "Obsession." As a part of the invitation, a light breakfast and light lunch will be served and a small "favor bag" will be provided. Motorola intends to invite approximately 140 guests for the day, including the America's Cup Host Committee ("Host Committee"), as well as other public officials and private persons. The Host Committee is a committee designated by the Mayor through no formal action of the Council.

Motorola has stated the fair market value of each gift pass (including the day long boat ride, the favor bag and two light meals) equals sixty five dollars (\$65). Motorola intends to invite the Mayor as a "special guest" and she will be given a pass to the event. Motorola will be inviting all other guests, including the Host Committee, by separate invitation.

Motorola currently has a contract with the City to build a Public Safety Communications System, and this contract was recently before the City Council for amendment. The City is also intending to issue a Request For Proposal ("RFP") within the next month or so for a digital microwave communications system. The Council will be asked to approve the RFP. Motorola is among the companies that will likely submit a bid on the proposal.

ANALYSIS

Under the Political Reform Act of 1974 (Gov't Code section 81000 et seq.), for public officials a "gift" may trigger disclosure requirements, but also may be a basis for disqualification from governmental decisionmaking, depending on whether certain threshold requirements are met.

Disclosure

Under Gov't Code section 87207(a)(1), certain public officials, such as the Mayor, must disclose the income, address and general business activity of donors of gifts valued at fifty dollars (\$50) or more. In this instance, if the Mayor accepts the gift pass, she will have to disclose the value of the pass from Motorola as sixty five dollars (\$65) on her 1992 SEI (which she will fill out upon leaving office at the end of this year).

Under the Fair Political Practices Commission ("FPPC") "gift" regulations for purposes of either disclosure or disqualification, the Mayor would not be the "recipient" of the passes to the Host Committee members. 2 Cal. Code of Regs. 18726.1.F

The FPPC is in the process of amending their "gift" rules.

See FPPC agenda of April 6, 1992. But the new rules are not yet effective and would not change the opinion in this memorandum.

Even though the Host Committee was informally created by her, the members of the Host Committee (and others) will be invited on the boat ride directly by Motorola. The fact that the Mayor formed the Host Committee does not make her a "recipient" of gifts to its members. 2 Cal. Code of Regs. 18726.1 (copy attached).

In summary, if the Mayor accepts the gift pass for herself to go on the yacht ride and does not return it, she will have to disclose the value of the gift pass (sixty five dollars (\$65)) on her next SEI.

Disqualification

Under Gov't Code section 87100 a public official must disqualify him or herself from participating in governmental decisions if he or she has one of the economic interests cited in the statute and the decision will affect one of those interests. In the present case, income interests are one type of economic interest that may be disqualifying; sometimes gifts may be considered income for the purpose of disqualification. See Gov't Code section 87103(e). Critically, however, only gifts from one donor aggregating two hundred fifty dollars (\$250) or more in value in the 12 months prior to the time the governmental decision was made constitute a disqualifying income interest.

In the present case, the fact that Motorola has a current contract with the City, which was recently amended is irrelevant to this analysis. But, since the City is soon to issue an RFP for a digital microwave communications system, on which Motorola may reasonably be expected to bid, the Mayor wants to know if she would be disqualified from participating in the decision whether to issue the RFP. Assuming the Mayor receives, or has received, no other gifts from Motorola in the 12 months prior to the Council's decision on the RFP, the mere fact that she accepts the sixty five dollar (\$65) gift pass for the boat ride will not disqualify her from participating in the discussion or decision on the RFP. Similar to the rule on disclosure, she does not have to consider the value of the gifts to members of the Host Committee for

purposes of disqualification.

JOHN W. WITT, City Attorney

By

Cristie C. McGuire

Deputy City Attorney

CCM:jrl:011(x043.2)

Attachment

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