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DATE: July 19, 2003
TO: Ana Molina-Rodriguez, Chief of Staff, Council District 8
FROM: City Attorney
SUBJECT: Gift Reporting Obligations of a Councilmember Who Turns Over a Gift to a Staff Member

MEMORANDUM OF LAW

FACTUAL BACKGROUND

In September 2002, a citizen provided Councilmember Inzunza with a \$125 gift certificate for a restaurant. The citizen told the Councilmember that the certificate was for the Councilmember or his staff. On the same day, Councilmember Inzunza gave you the gift certificate. You claimed the gift certificate on your Statement of Economic Interests for 2002, but Councilmember Inzunza did not.¹

QUESTION PRESENTED

Is a Councilmember who receives a gift valued at over \$50 relieved of the requirement to report the gift as a result of giving the gift to a staff member?

SHORT ANSWER

No. A Councilmember is not relieved of the obligation to report a gift valued at over \$50 as a result of giving the gift to a staff member.

ANALYSIS

¹ Although your question relates to past conduct, our Office is interpreting your request as one for prospective advice for the purpose of determining whether Councilmember Inzunza should file a supplemental Statement of Economic Interests for 2002.

This matter is governed by the Political Reform Act of 1974 [Act], which is codified at California Government Code sections 81000–91015. The Act was adopted to ensure that public officials perform their duties in an impartial manner, free from bias caused by their financial interests. Cal. Gov't Code § 81001. Although this matter is also governed by the City of San Diego Ethics Ordinance, codified at San Diego Municipal Code sections 27.3501–27.3595, the gift reporting requirements under the Ethics Ordinance are identical to the requirements of the Act. San Diego Municipal Code § 27.3510(g).

A gift is a payment that confers a personal benefit on the recipient, 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. Cal. Gov't Code § 82028(a). The Act requires a public official to report gifts received by the official from a single source valued at \$50 or more. Cal. Gov't Code § 87207.

An official receives a gift when the official “knows that he or she has either actual possession of the gift or takes any action exercising direction or control over the gift.” Cal. Code Regs. tit. 2, § 18941(a). *“Turning a gift over to another person does not negate receipt or acceptance of a gift.”* Cal. Code Regs. tit. 2, § 18941(a)(3) (emphasis added).

When a citizen gave Councilmember Inzunza a gift certificate at the September 2002 event, he took actual possession of the gift certificate, and also exercised direction and control of the gift by making a choice regarding who would use it. For that reason, he received the gift for purposes of the Act. Cal. Code Regs. tit. 2, § 18941(a). The receipt of the gift was not negated by turning it over to a staff member. Cal. Code Regs. tit. 2, § 18941(a)(3). In order for an official to negate a gift received and to avoid a reporting obligation, the official must do one of the following:

- (1) Return the gift to the donor or the donor's agent, unused, within 30 days of receipt;
- (2) Donate the gift unused to a charitable organization within 30 days of receipt, without claiming the donation as a tax deduction;
- (3) Donate the gift unused to a state, local, or federal government agency within 30 days of receipt, without claiming the donation as a tax deduction; or
- (4) Reimburse the donor or the donor's agent for all or a portion of the gift, within 30 days of receipt

Cal. Code Regs. tit. 2, § 18943(a).

Because none of these things occurred, Councilmember Inzunza did not negate the gift, and therefore has an obligation to disclose the gift on his 2002 Statement of Economic Interests. Because the gift was not reported on that statement, he should file a supplemental statement disclosing the gift.

Additionally, if you reported the gift as a gift to you from the citizen, you should file a supplemental statement to clarify that Councilmember Inzunza was the source of the gift to you. A person is the source of a gift if the person makes the gift to an official and is not acting as an intermediary. Cal. Code Regs. tit. 2, § 18945(a). Here, Councilmember Inzunza was not acting as an intermediary, but instead exercised discretion and control over who received the gift certificate. Your conflict of interest code requires you to disclose gifts received from sources located within the City of San Diego; Councilmember Inzunza fits within that category.

It should be noted that the reporting obligations associated with this gift certificate would be different if the citizen donating the gift certificate had directed Councilmember Inzunza to give the gift certificate to you, and had identified you as the recipient by name. In that circumstance, you would have received a gift from the citizen, and the Councilmember would not have received a gift, because he would not be exercising any control over the disposition of the gift certificate. For purposes of the Act, if a donor gives a gift to a person with direction that the gift be turned over to a clearly identified official, the donor is the source of the gift to the official. Cal. Code Regs. tit. 2, § 18945(a)(1).

I hope that this memorandum has answered your questions. If you have any additional questions please feel free to call me at 533-5850.

CASEY GWINN, City Attorney

By
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