



OFFICE OF COUNTY COUNSEL
INTER-DEPARTMENT MEMORANDUM

TO: Chair, Members of the Board of Supervisors
FROM: Edward L. Knapp, Chief Ass't. County Counsel
DATE: March 20, 2009
RE: Designation of Agency Official to Examine Agency Gifts
Under FPPC Regulation 2 CCR §18944.2

A handwritten signature in dark ink, appearing to be "ELK", is written over the "FROM:" line of the memorandum.

A recent amendment to an FPPC regulation (2 CCR §18944.2) requires the county to designate a county employee to determine whether a payment made to the county which personally benefits a county official is either a gift to the county or a gift to the county official, and to file a new form with the FPPC listing any such gifts. This agenda item requests that the Board of Supervisors designate a county employee to make those determinations. Assuming that the Board does not wish to retain this function itself, or to delegate to an individual Board member, staff recommends that the Board delegate this function to the CAO, with the auditor as an alternate. A resolution to that effect is attached.

The Political Reform Act, §81000 et seq., limits the value of most gifts that can be received by specified public officials and candidates from a single source during the calendar year to a specific dollar amount that is adjusted biennially by the FPPC to reflect changes in the Consumer Price Index (currently \$420). Also, the Political Reform Act requires that specified public officials and candidates report gifts received by them. Certain county employees designated in the county conflict of interest code are also subject to gift limitations and reporting requirements. The statutes and regulations concerning gifts to public officers and employees are extensive and complicated and cannot be summarized here. A copy of the FPPC publication entitled "Limitations and Restrictions on Gifts, Honoraria, Travel and Loans" is attached.

In general, adherence to the gift limitations and reporting requirements are the responsibility of the donors and recipients. A payment to a public agency which confers a personal benefit on an individual agency officer or employee is generally considered to be a gift to the individual, which is subject to the limitations and reporting requirement

applicable to that individual. However, a recent change in the FPPC regulations establishes the circumstances under which a payment to a public agency which confers a personal benefit on an agency officer or employee would not be considered a gift to that officer or employee but rather would be considered a gift to the agency instead.

A hypothetical example might serve to clarify the issue. Suppose that a city receives an invitation from a sister city to send a city representative to visit the sister city, and the sister city offers to pay for the travel, hotel, meals and other expenses incurred for the trip. A gift is defined as a payment that confers a personal benefit on the recipient, and travel is generally considered by the FPPC to confer a personal benefit on the public official who travels, and therefore the payment of travel and accommodation expenses by the sister city falls within the definition of a gift. If the invitation specifies that it is made only for a certain specified city officer to visit the sister city, then the travel funds received by the city from the sister city would be considered a gift to the individual officer which would be subject to the limitations and reporting requirements applicable to that officer. However, if the invitation allows the city to choose its representative to go to the sister city, then the funds received for travel and other expenses might be considered a gift to the city itself and not to the city official who was chosen by the city to go on the trip.

The newly revised FPPC regulation, 2 California Code of Regulations (CCR) §18944.2 (copy attached) is designed to provide guidance in the situation described above and other similar situations. As can be seen, the regulation sets forth criteria under which a payment made to a public agency for official business would not be considered a reportable or limited gift to an individual agency official, even though the official receives a personal benefit from the payment. The regulation requires public agencies to designate a person with the agency who will make the decision whether a particular payment is either a gift to the agency or to the official under the criteria. The regulation requires that this decision be made by the "agency head," defined as the person "in whom the ultimate legal authority of an agency is vested," or by a person who has been delegated the authority to make this determination on behalf of the agency. Since a county does not have an individual in whom the ultimate legal authority of the agency is vested, the county must delegate this task to a county employee. Staff proposes that the board of supervisors designate the Chief Administrative Officer to be the county delegatee for purposes of 2 CCR §18944.2(b)(2). In instances in which the CAO is not available or is conflicted, staff proposes that the board designate the county auditor as an alternate.

Please note that new Regulation 2 CCR §18944.2 does not apply to a payment for travel for any local elected officer, or for the officials listed in Government Code §87200 (members of the board of supervisors, planning commissioners, chief administrative officer, county treasurer, district attorney, county counsel, and any public officials who manage public investments). A gift of travel expenses for these officials is always

considered a gift to the official, subject to the gift and reporting requirements applicable to that official, and cannot be converted to an agency gift.

The task of the county designee would be to review any payment made to the county that confers a personal benefit on a county official and thus would otherwise would be considered a gift to that official, and determine whether it should be considered a gift to the county instead under the criteria set forth in 2 CCR §18944.2. The criteria include that the payment can only be used for official county business, and the county must control the payment. If for travel expenses, the payment cannot exceed the agency's established reimbursement rate, and the determination that it is a county gift must be made in advance of the travel. The donor may identify a purpose for the payment, but cannot specify which official may use the payment by name, title, class or otherwise. The county designee must select who in the county would use the payment, and of course could not select him or herself. The proposed resolution designates the CAO to make the necessary decisions required under 2 CCR §18944.2 unless the CAO is unavailable, or is one of the officials likely to be identified to use the payment, in which case the determination would be made by the county auditor. If the county designee determines that a payment is a gift to the county, then the county must report the payment within 30 days on a new form devised by the FPPC for that purpose, form 801 (copy attached). The form 801 must be filed with the county Elections Office and be posted on the Elections website.

Attached hereto is a resolution which designates the CAO as the county officer with the responsibility to make the determinations necessary under 2 CCR §18944.2, and designates the county auditor as an alternate. If the Board decides to delegate the functions to someone else, the resolution can be easily modified to change the name of the delegatee.

ELK:km

Encl.

cc: CAO
Auditor, w/encl.
Elections