



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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February 24, 2023

James C. Harrison
General Counsel
Peninsula Corridor Joint Powers Board
1901 Harrison St., Suite 1550
Oakland, CA 94612

Re: Your Request for Informal Assistance
Our File No. I-23-018

Dear Mr. Harrison:

This letter responds to your request for advice on behalf of the Board of Directors of the Peninsula Corridor Joint Powers Board (“Caltrain”) regarding the conflict of interest and gift provisions of the Political Reform Act (the “Act”).¹ Because your questions are general in nature and not about specific payments or officials, we are treating your request as one for informal assistance.²

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. We also do not provide advice regarding the permissible use of public funds. Note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

If Caltrain provides train passes at no cost to members of its Board of Directors, do these passes constitute income or gifts to the Directors?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

If Caltrain's issuance of the passes is a permissible use of public funds, the passes do not constitute gifts or income to the Board members. To the extent the passes are an impermissible use of public funds, the passes constitute a gift to the official under Regulation 18944.3. However, we cannot provide assistance outside of the Act and express no opinion regarding the permissibility of the issuance of the passes under laws regarding the use of public funds.

FACTS AS PRESENTED BY REQUESTER

You serve as General Counsel of Caltrain. As General Counsel, you are authorized to seek advice on behalf of Caltrain's Board of Directors (the "Board," or the "Directors"). Caltrain is a joint powers authority formed in 1991 by the City and County of San Francisco and the transit agencies of San Mateo and Santa Clara Counties to operate a commuter rail service operating along the San Francisco Peninsula, through the South Bay to San Jose and Gilroy. Caltrain's Board consists of nine Directors: three representing the City and County of San Francisco; three representing San Mateo County; and three representing the Santa Clara Valley Transportation Authority (VTA).

You state that Caltrain has experienced a dramatic shift in ridership after the COVID-19 Pandemic and that the Board is determined to better understand how to improve the system to strengthen its service and expand its ridership. One way in which Caltrain plans to improve and expand its service is through the input of its Directors, who have a duty to oversee the operations of the Caltrain system. To help its Directors carry out their oversight duties, Caltrain's Executive Director wishes to provide each Director a Caltrain pass at no cost. These passes—which are the property of Caltrain—would allow Directors to observe the operations of the Caltrain system, including, but not limited to: employee conduct, the timeliness of service, the ease of wayfinding, the cleanliness of trains and stations, ridership levels, as well as safety and security issues. Directors would then use the information gleaned from use of their Caltrain passes to make informed decisions about the needs of the Caltrain system. You state that there may be instances where a director uses the pass for personal travel, but whenever a director rides on Caltrain, they will nevertheless be engaging in their official oversight duties through their real time observation of Caltrain's service.

ANALYSIS

Gifts

Generally, when an official receives a payment (including reimbursement) for their travel, that payment is a reportable gift or income under the Act. The term "travel payment" includes payments, advances, or reimbursements for travel, including actual transportation, parking and related lodging and subsistence. (Section 89506(a).)³ Your question concerns payments by Caltrain,

³The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. For 2023-2024, the gift limit is \$590. (Section 89503; Regulation 18940.2.) Gifts from a single source aggregating to \$50 or more must be disclosed, and gifts aggregating to \$590 or more during any 12-month period may subject an official to disqualification with respect to the source. (Section 87103(e).) Designated employees should obtain a copy of their conflict of interest

a local government agency, to members of that agency's board of directors. On November 10, 2022, we provided informal email advice on this matter, concluding that "Because the agency is providing a pass to officials in that agency Regulation 18944.3 would apply and as long as it's a lawful expenditure of public moneys, it would not be a reportable gift." Regulation 18944.3 states:

Except as provided in Regulations 18944 and 18944.1, a payment by a government agency from that agency's assets that provides food, beverage, entertainment, goods, or services of more than a nominal value to an official in that agency is a gift to that official unless the payment is a lawful expenditure of public moneys.

Regulation 18944 provides that money donated by a private donor and given to the agency to benefit certain officials may be considered a gift to those officials. However, you have not provided any facts that indicates that Caltrain has received a private donation to pay for the passes. Likewise, Regulation 18944.1 governs tickets and passes provided by agencies, but Regulation 18946 defines "ticket" and "pass," as providing single or repeated access, entry, or admission to an event or series of events, respectively. The Caltrain passes in question here do not meet this definition.

As we previously advised in the *Gahly* Advice Letter (I-15-077), with few exceptions, the Act does not regulate an agency's proper use of public funds. In this case, the question of whether the proposed expenditures are lawful expenditures of public moneys is outside the scope of the Act.⁴ You have provided no facts to suggest that a private donor is paying for the passes. Therefore, if the expenditures are lawful and not directly or indirectly paid by a private donor, the passes provided to Caltrain's Directors are not considered gifts for purposes of the Act. However, to the extent that the expenditures are an impermissible use of public funds, the payments would be gifts under Regulation 18944.3. We express no opinion on the permissibility of the expenditures under laws outside of the Act regarding the use of public funds.

Whether the Caltrain passes provided to Directors at no cost constitute "income"

Under the Political Reform Act (the Act), "income" does not include travel payments provided to the official by any state, local, or federal government agency as part of the official's employment with that agency. (Section 82030(b)(2).) In this case, except to the extent the expenditures are a gift as analyzed above, the Caltrain passes provided at no cost to the Directors do not further constitute income to the Directors under the Act because they are a form of travel benefit provided by Caltrain, a local government agency, to its Directors in connection with their official duties.

code from their agency. Some conflict of interest codes require very limited disclosure of income and gifts. Gifts from sources that are not required to be disclosed on the Form 700 are not subject to the \$590 gift limit but still may subject the public official to disqualification.

⁴ Please note, we express no opinion regarding other laws that prohibit the misuse of public funds and property for personal use or gifts including, but not limited to, Penal Code Section 424 and California Constitution, Article XVI, Section 6.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

A handwritten signature in black ink, appearing to read 'Toren Lewis', with a stylized flourish at the end.

By: Toren Lewis
Counsel, Legal Division

TA:aja