



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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May 15, 2024

Victor Wang
Chairman to CSV
260 Sheridan Ave., Suite 200
Palo Alto, CA 94306.

Re: Your Request for Advice
Our File No. I-24-034

Dear Mr. Wang:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).¹ Please note that we are only providing advice under the Act’s gift and conflict of interest provisions and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. Because the questions presented are general in nature and no specific payments or costs for each activity have been identified, we are treating your request as one for informal assistance.²

Please 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

Are payments by the Department of Foreign Affairs Office of Chongqing Municipal Government for the Silicon Valley Mayor’s trip to China in May 2024 (“May 2024 China Trip”) subject to the gift limits set forth in the Act?

CONCLUSION

Payments for actual transportation and related lodging and subsistence for each official from the Department of Foreign Affairs Office of Chongqing Municipal Government, to travel to China are reportable gifts that are not subject to the gift limits pursuant to Section 89506(a)(2). As

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

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

reportable gifts, these payments may also require disqualification from governmental decisions affecting the source of the gifts.

Apart from payments for actual transportation and related lodging and subsistence, payments for activities while in China may likewise be reportable gifts under the Act but may be subject to the Act's gift limit. These payments must be examined on a case-by-case basis under the Act's applicable gift rules. While you have identified some of the activities in which the officials may engage, you have not provided a detailed description of the activities or identified the associated costs of the activities. Accordingly, we express no opinion regarding these activities and whether the activities identified are reportable gifts under the Act or subject to the Act's gift limit.

Generally, payments for activities such as tours are reportable gifts and subject to the Act's \$590 gift limit unless the tour is considered informational material, as discussed below. Additionally, the pro-rata share of the cost of the food, catering services, entertainment, and any item provided to each official at an invitation-only event are reportable and subject to the \$590 gift limit, except that payments for subsistence such as food and beverages provided at the event are not counted towards the gift limit if paid for by a 501(c)(3) nonprofit organization or other individual or entity specified in Section 89506(a)(2), such as a foreign government.

FACTS AS PRESENTED BY REQUESTER

China Silicon Valley ("CSV"), a California non-profit corporation, has invited the following Silicon Valley elected officials to travel to China as part of the May 2024 China Trip: Mayor for the City of Antioch Lamar Thorpe, Mayor for the City of East Palo Alto Antonio Lopez, Vice Mayor for the City of Morgan Hill Marilyn Libers, Mayor for the City of Oakley Anissa Williams, Mayor for the City of San Carlos John Dugan, and Mayor for the City of Saratoga Yan Zhao ("Silicon Valley Officials").³

The stated purpose, sponsorship, and certain arrangements for this trip are similar to the Silicon Valley Mayors' China Trips CSV previously organized. We have issued letters regarding these trips and other China trips organized by CSV.⁴

CSV aims to improve business cooperation between China and Silicon Valley, help create jobs, and increase economic activity in both China and Silicon Valley. CSV's purpose in organizing this trip is to facilitate investment and international trade and promote communications between China and the Silicon Valley region. However, all international air travel expenses to and from China, approximately \$2,000, and the remaining expenses for travel, lodging, and meals within China for the elected officials during the May 2024 China Trip, approximately \$3,000, will be provided by the Department of Foreign Affairs Office of Chongqing Municipal Government.

³ In a follow-up email on April 17, 2024, CSV provided authorization to the request for advice on behalf of these public officials, pursuant to Regulation 18329.

⁴ Advice Letters, *Seem* No. A-17-103, and *Seem* No. A-17-058; Informational Assistance Letters, *Seem* No. I-16-236; No. I-16-079 and No. I-15-189, and collective requests for advice *Reyes et al. Nos.* A-14-071, A-14-072, A-14-078, and A-14-079; and *Wang* Advice Letters, A-17-213 and A-18-075.

The Silicon Valley Officials are scheduled to arrive in China on May 20, 2024. While in China, the Silicon Valley Officials are scheduled to attend a welcoming banquet by the Chongqing Municipal Government and an art show on May 21, 2024, attending the opening ceremony at the Chongqing International Cooperation Conference, the Green Development of Cities, and International Cooperation exhibition on May 22, 2024, and the 2024 Western China International Fair, a promotion session of Economic, trade, and cultural cooperation opportunities, and the food and culture market on May 23, 2024. On May 24-25, 2024, the Silicon Valley Officials are scheduled to attend multiple field visits to local companies, industrial parks, and cultural sites and will also participate in a city tour.⁵

The Silicon Valley Officials will return from Chongqing on May 26, 2024.

ANALYSIS

A gift⁶ is defined under Section 82028(a) as:

... any 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 unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.

To reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

- **Gift Limit of \$590:** The Act limits the acceptance of gifts by certain public officials. The current limit is \$590 from a single source in a calendar year (Section 89503; Regulation 18940.2). This gift limit applies to all public officials (Sections 89503(a) and 87200).
- **Gift Reporting:** To inform the public about potential gifts' influences, the Act imposes reporting obligations on certain public officials, requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year be disclosed on the officials' statements of economic interests (Sections 87200 - 87210).
- **Conflict of Interest Disqualification:** The Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$590 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 and 87103(e); Regulations 18700 and 18702.4.)

⁵ Since the Silicon Valley Officials will receive a benefit, each activity or event on the itinerary would need to be examined individually to determine whether it is a gift subject to the gift limit or if an exception applies. We only provide general guidance on exceptions to the gift rules. If additional guidance is needed, we advise you to seek additional advice providing a detailed description of each event and the costs of the activities.

⁶ For all gifts, if the official reimburses the donor or donor's intermediary for the gift within 30 days, no gift is considered to have been received or accepted. (Regulation 18941(c)(3).)

Under some circumstances, even though payment for transportation, lodging, and subsistence may be a reportable gift under the Act, the gift is not subject to the Act's current \$590 gift limit. In this regard, Section 89506(a) provides (in pertinent part) an exception from the gift limits for certain travel payments:

Payments, advances, or reimbursements for travel, including actual transportation and related lodging and subsistence that is reasonably related to a legislative or governmental purpose or to an issue of state, national, or international public policy, are not prohibited or limited by this chapter if either of the following applies:

...

(2) The travel is provided by a government, a governmental agency, a foreign government, a governmental authority, a bona fide public or private educational institution, as defined in Section 203 of the Revenue and Taxation Code, a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, or by a person domiciled outside the United States who substantially satisfies the requirements for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

Here, the travel is directly related to a legislative or governmental purpose and is provided by a foreign government. The stated purpose of this trip is to facilitate investment and international trade and promote communications between China and the Silicon Valley region. In China, Silicon Valley officials will have opportunities to participate in gatherings with local government officials, such as conferences and exhibitions. The Department of Foreign Affairs Office of Chongqing Municipal Government will pay for all international air travel expenses to and from China and the remaining expenses for actual transportation, lodging, and subsistence within China during the trip.⁷ Consequently, the specified payments are reportable gifts that are *not subject to gift limits* pursuant to Section 89506(a)(2).

Please note that any payments made for items *other* than actual transportation and related lodging and subsistence may be considered a reportable gift *and* subject to the \$590 gift limit. Payments for activities other than payments for actual transportation and related lodging and subsistence must be examined on a case-by-case basis under the Act's applicable gift rules. You have identified some of the activities in which the officials may engage including banquets, art show, conferences, exhibitions, fairs, and field visits including cultural sites and tours. However, you have not provided a detailed description of the activities or identified the associated costs of the activities. Accordingly, we can express no opinion regarding these activities and whether the activities identified are reportable gifts under the Act or subject to the Act's gift limit. However, we do provide the following for general assistance in determining whether any particular activity may be a reportable gift or subject to the gift limit.

Tours and Sightseeing

⁷ Please note that Section 89506(f) requires certain nonprofits to disclose certain donors when they regularly organize and host travel for elected officials and make payments, advancements, or reimbursements for travel by elected state officer or election local officeholder. Although your facts indicate that CSV, a nonprofit organization, is not making payments for the public officials' travel expenses, you should review Section 89506(f) to determine whether it may apply. If you need further assistance regarding this section, you may wish to contact us for further advice.

Regulation 18942(a)(1) excludes “informational materials” from the definition of a gift. Regulation 18942.1 defines “informational material” as “any item which serves primarily to convey information and which is provided to an official for the purpose of assisting them in the performance of their duties.”

Under certain circumstances, the Commission has interpreted “informational material” to include informational tours such as on-site demonstrations and inspections designed specifically for public officials. (See *In re Spellman* (1975) 1 FPPC Ops. 16.) and *Briggs* Advice Letter, No. A-93-210.) However, we have looked at several factors when determining whether a tour is indeed informational material, including whether the tour will primarily convey information, whether the tour is specifically designed for public officials, and whether the tour is formally structured to convey information to the officials. Additionally, we consider whether the tour appears extravagant in value or natural in relation to the information conveyed. (*Barker* Advice Letter, No. I-93-186.) In sum, a tour is informational material only if it is to assist officials in performing their official duties. (*Federighi* Advice Letter, No. A-07-139 [advising that payments by a 501(c)(3) organization for an official to attend a private concert and to take a tour of a historical battleship while attending a conference in France were gifts to the official subject to both the gift limit and reporting, despite the fact that payments by the organization for the official’s airfare, hotel accommodations, and meals were only reportable and not subject to the gift limit under Section 89506].)

In addition, payments made for an official’s tour do not fall within the exception of the Act’s gift limits for informational material merely because it can be said that the tour offers a historical or cultural perspective of a country or region. (*Houlihan* Advice Letter, No. A-10-077.) As an example, payments made for the official to visit a museum or other historical sites, art show, fair, or cultural market; take a tour; or engage in other similar recreational activities are generally gifts subject to the \$590 gift limit, unless there are sufficient factual circumstances closely tying the payments to the Silicon Valley Official’s duties as a mayor. Thus, without additional facts and a full description of the activity and costs of the activity, we are unable to determine whether the activities listed above fall within the “informational material” exception to the gift rules. Although, we can caution that an activity such as an art show is likely an activity that would constitute not only a reportable gift, but also a gift subject to the gift limit.

Organized Meals

The itinerary lists activities that may include organized meals during the China trip, such as the opening ceremony, banquet, and food and culture market. While the Act’s exception for travel paid for by a foreign government covers subsistence such as meals and beverages, payments made for activities arranged in coordination with a meal do not fall within the exception for travel paid for by a foreign government merely because the activities occur simultaneously with the meal. For example, an invitation-only event such as a banquet, party, gala, celebration, or other similar function must be valued as provided for by Regulation 18946.2, which states the following in pertinent part:

(b) Invitation-Only Events. Except as provided in subdivisions (d) through (f) of this regulation and in Regulation 18946.4, the admission value of the benefit received by an official and one guest who attend an invitation-only event is the official’s and the guest’s pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest that is available to all guests attending the event. Any

other specific benefit provided to the official and guest at the event, such as golf green fees, is valued at fair market value.

(c) “Pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official.” The term “pro-rata share of the cost of the food, catering services, entertainment, and any item provided to the official and guest” means the cost of all food, catering services, entertainment, and any specific item presented to all attendees as part of the event, divided by the number of acceptances or the number of attendees.

Pursuant to Regulation 18946.2, if any individual or entity other than one as specified in Section 89506(a)(2) pays for an invitation-only event, the pro rata cost of the event is a gift to each Silicon Valley Official and is subject to the \$590 gift limit. Nonetheless, subsistence such as a meal and beverages provided at an invitation-only event paid for by a 501(c)(3) nonprofit organization or other individual or entity specified in Section 89506(a)(2), such as a foreign government, while in China, are not subject to the Act’s \$590 gift limit. However, we caution that this exception for meals and beverages applies only to subsistence. To the extent a meal or beverage exceeds what would be typical subsistence provided to a traveling official or is lavish or extravagant in nature, you may wish to seek further advice fully describing the circumstances and nature of the meal.

Thus, for an invitation-only event paid for by a foreign government, only the remainder of the pro-rata share of the cost of the event, excluding the value of subsistence including typical meals and beverages, is subject to the \$590 gift limit. However, even if a meal and beverages are provided by a foreign government, each Silicon Valley Official’s full pro-rata share of the event must be reported, which may potentially disqualify the Silicon Valley Officials from taking part in decisions affecting the source of the payment.

Conflict of Interest Disqualification

As mentioned above, a public official who receives a gift(s) of \$590 or more may have a financial conflict of interest under the Act. (Sections 87100 et seq.) The official must disqualify himself or herself from voting or otherwise participating in a governmental decision affecting that source if the payment was received or promised to the official within 12 months preceding the decision. Therefore, if the public official accepts gifts valued at \$590 or more, the official may be prohibited from participating in governmental decisions affecting the source of those gifts. The person who makes the gift to the official is the source of the gift unless that person is acting as an intermediary. (Regulation 18945.)

If you have other questions on this matter, please contact me at kbaeta-orick@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel



By: Katelyn L. Baeta-Orick
Counsel, Legal Division

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