



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 6, 2024

Joshua M. Caplan
Office of the California Attorney General
600 West Broadway, Suite 1800
San Diego, CA 92101

Re: Your Request for Informal Assistance
Our File No. I-24-118

Dear Mr. Caplan:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).¹ Because your request does not pertain to a specific distribution of tickets, 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.

Also 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

Under Regulation 18944.1 and the 22nd District Agricultural Association’s proposed Ticket Policy, could a District official first request event tickets for distribution to members of the public, consistent with approved public purposes, then personally distribute the tickets without the tickets constituting a “gift” to the official?

CONCLUSION

Yes, as discussed below, as long as certain provisions are included in the District’s proposed Ticket Policy, it will meet the requirements of Regulation 18944.1(b). Thereafter, an official who requests and distributes tickets in accordance with the Ticket Policy and its stated public purposes,

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).)

and who satisfies the other requirements of Regulation 18944.1(a), does not receive a “gift” for purposes of the Act.

FACTS AS PRESENTED BY REQUESTER

The 22nd District Agricultural Association (“District”) owns and operates the Del Mar Fairgrounds. The District is a state institution formed by the California Legislature through the provisions of the California Food & Agricultural Code. The District is managed by its Board of Directors, which is comprised of nine individuals appointed by the California Governor. Through its nine-member Board of Directors, the District has broad authority to manage the affairs and operation of its State-owned property, including contracting with third-party event organizers and promoters to conduct events on District property including, for example, gem fairs, horse shows, holiday parties, cotillions, Cirque du Soleil, farmers markets, concerts, bingo, pet expos, and agricultural and farming-related events.

The District was created for the purposes of “[h]olding fairs, expositions and exhibitions for the purpose of exhibiting all of the industries and industrial enterprises, resources and products of every kind or nature of the state with a view toward improving, exploiting, encouraging, and stimulating them” and “[c]onstructing, maintaining, and operating recreational and cultural facilities of general public interest.” Cal. Food & Ag. Code § 3951, subds, (a), (b). The District is also authorized to “do any and all things necessary to carry out the powers and the objects and purposes” for which the District was formed. *Id.*, at § 3954. Among other things, the District has exclusive authority in deciding whether to contract with third-parties to conduct events on District property. (*Id.*, at § 3965.1, subd. (a).) If the District decides to contract with third-parties, the contract will accord with the District’s written policies and procedures for contracting and all applicable state laws governing contracts. (*Id.*, at § 4051, subd. (a)(1)(A).)

The District is reviewing its existing Ticket Policy. A question has arisen regarding the implementation of the policy regarding the distribution of complimentary tickets. Over the course of the year, with fair season and other events taking place at the fairgrounds, thousands of tickets may be distributed to the public by the agency. There is concern regarding the feasibility of a single “ticket administrator” position within the District, given the total number of tickets distributed. The District is seeking advice regarding the following potential ticket distribution method:

1. An agency official, including a District Board Member and certain District employees (e.g., those employees required to file an annual Form 700), requests that a certain number of tickets for distribution, consistent with a public purpose included in the agency’s ticket policy.
2. Other designated agency officials determine whether the requested allocation does, in fact, meet one of the public purposes listed in the agency’s Ticket Policy.
3. The requested number of tickets are then given to the official who made the request, to be distributed/delivered in a manner consistent with the stated public purpose.

Under this distribution method, a District official might request a number of tickets to be distributed to a specific party for a particular purpose. For example, a District official might request “40 tickets to be distributed to the Boys & Girls Club local chapter for purposes of supporting local

community and non-profits.” Alternatively, a District official might more generally request a specific number of tickets to be distributed in accordance with the public purposes stated in the District’s Ticket Policy.

The District is seeking advice on whether this potential ticket distribution method would be consistent with Regulation 18944.1, such that it would not result in the receipt of a reportable “gift” to the official who distributes the tickets to the members of the public.

ANALYSIS

A public official subject to the Act generally must report the receipt of any gift or gifts with an aggregate value of fifty dollars (\$50) or more. (Section 87207(a)(1).) Public officials are also generally prohibited from receiving a gift or gifts with an aggregate value of more than five hundred and ninety (\$590) in a calendar year. (Section 89503; Regulation 18940.2.)

Under the Act, a “gift” is generally defined 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. (Section 82028(a).) A gift is both “received” and “accepted” when the public official, or the official’s immediate family member, knowingly takes actual possession of the gift, is provided the benefit of the gift, or takes any action exercising direction or control of the gift. (Section 89503.5.)

Regulation 18944.1 establishes an exemption in which a ticket or pass provided to an official by the official’s agency and distributed and used in accordance with a policy adopted by the agency is not a gift under the Act if all of the following criteria are met:

- (1) The distribution of the ticket or pass by the agency is made in accordance with a policy adopted by the agency that incorporates all of the provisions of subdivision (b) and is maintained as a public record as required in subdivision (c).
- (2) The distribution of the ticket or pass is reported pursuant to subdivision (d).
- (3) The ticket or pass is not earmarked by an outside source for use by a specific agency official.
- (4) The agency determines, in its sole discretion, who uses the ticket or pass.

(Regulation 18944.1(a).) Subdivision (b), in turn, provides:

Any distribution of a ticket or pass under this regulation to, or at the behest of, an agency official must be made pursuant to a written agency ticket distribution policy, duly adopted by the legislative or governing body of the agency or, if none, the agency head that contains, at a minimum, all of the following:

- (1) A provision setting forth the public purposes of the agency for which tickets or passes may be distributed.
- (2) A provision requiring that the distribution of any ticket or pass to, or at the behest of, an agency official accomplishes a stated public purpose of the agency.

- (3) A provision prohibiting the transfer of any ticket received by an agency official pursuant to the distribution policy except to members of the official's immediate family or no more than one guest solely for their attendance at the event.
- (4) A provision prohibiting the disproportionate use of tickets or passes by a member of the governing body, chief administrative officer of the agency, political appointee, or department head.

(Regulation 18944.1(b).)

The District is considering a potential distribution method in which—to summarize—an official would request a certain number of tickets either (A) for distribution to a specific party for a particular public purpose or (B) for distribution to unidentified parties in accordance with the public purposes identified in the agency's Ticket Policy. Other agency officials would then consider such a request and, if approved, given to the official for distribution in accordance with the official's request.

The first question to be addressed is whether this ticket distribution method would comport with the requirements Regulation 18944.1(b) establishes for agency ticket policies. If so, the next question is whether the criteria described in Regulation 18944.1(a) would also be satisfied, such that the distribution of tickets to the officials for subsequent distribution to the public would not be considered a gift to the official.

Proposed Ticket Policy Under Regulation 18944.1(b)

The proposed ticket distribution method would meet the requirements of Regulation 18944.1(b) as long as the necessary provisions are included. You have indicated the District's Ticket Policy would set forth public purposes of the agency for which tickets or passes may be distributed and you have provided a copy of the District's current Ticket Policy, which does the same. You have also indicated that any requested ticket distribution would require the tickets to be distributed in accordance with those public purposes. These facts satisfy Regulation 18944.1(b)(1) and (2).

Regulation 18944.1(b)(3) requires additional discussion. That provision prohibits "the transfer of any ticket received by an agency official pursuant to the distribution policy except to members of the official's immediate family or no more than one guest solely for their attendance at the event." Regulation 18944.1(e) clarifies that use by an official and the official's family, or no more than one guest, is considered "personal use" by the official. Thus, Regulation 18944.1(b)(3) prohibits the transfer of tickets by officials to excluded third parties when the tickets are given by the agency to the official for the official's personal use. This is consistent with our past advice, in which we explained:

While Regulation 18944.1[] sets forth the requirements for the agency's written ticket distribution policy, it does not specify who within the agency may receive and distribute tickets on behalf of the agency. We note that some local jurisdictions have opted to include within their ticket distribution policies a designated "ticket administrator" for this purpose.

(*Barazoto* Advice Letter, No. I-18-125.)

Finally, regarding Regulation 18944.1(b)(4), you have not indicated whether the District's updated Ticket Policy would include a provision prohibiting the disproportionate use of tickets or passes by a member of the governing body, chief administrative officer of the agency, political appointee, or department head. We note that Regulation 18944.1 was amended in 2019 to include this requirement. Provided the District's updated Ticket Policy includes such a provision, it would satisfy the requirements of Regulation 18944.1(b).

Tickets as Gifts Under Regulation 18944.1(a)

If an official distributed tickets consistent with the District's proposed Ticket Policy, as discussed above, the tickets would not constitute a gift to the official. Consistent with the Act's definition of "gift" under Section 82028, the official's temporary possession of the tickets would not confer any personal benefit to the official. Rather, the official would merely act as the mechanism by which the agency distributes tickets to the public consistent with the public purposes identified in the District's Ticket Policy.

Even in the scenario where an official more generally requests the allocation of tickets to be generally distributed consistent with the District's Ticket Policy (as opposed to identifying a specific party and public purpose), that distribution method would satisfy Regulation 18944.1(a) as long as the tickets were: (1) distributed in accordance with the District's Ticket Policy and its approved public purposes (maintained as a public record); (2) reported pursuant to Regulation 18944.1(d); (3) not earmarked by an outside source for use by a specific agency official; and (4) the agency (including the official requesting the tickets) determined, in its sole discretion, who uses the ticket or pass. With respect to the last two requirements, we note they are more relevant in the context where tickets are first provided to the agency by an outside party. For example, if Cirque du Soleil provided 10 tickets for each District Board member, the tickets would constitute gifts if accepted by the respective Board member. If, however, Cirque du Soleil provided 100 tickets to the District as a whole, without earmarking or otherwise determining who would use the tickets, the tickets could be distributed pursuant to Regulation 18944.1 without constituting gifts to District officials.

Additionally, we caution that notwithstanding Regulation 18944.1, or the public purpose identified in the District's Ticket Policy, the question of whether a given distribution of tickets is a lawful expenditure of public funds is outside the scope of the Act. 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. Moreover, to the extent the distribution of tickets is an impermissible use of public funds, the payments would be gifts under Regulation 18944.3, which provides:


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.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

KC:aja