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April 2, 2010

Ross Johnson, Chairman  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

RE: Agenda Item 45: Amendment of Regulation 18942 – Gifts Exchanged on Birthdays, Holidays, or Similar Occasions

Dear Chairman Johnson:

By way of introduction, I am the City Attorney of San Mateo and have recently been appointed the Chair of the League of California Cities City Attorneys FPPC Committee, replacing Michael Martello. I am aware of the great work Michael has done over the last several years to build a positive, working relationship with the Commission and its staff, and on behalf of myself and the Committee, I would like to assure you and the Commission that we are committed to continue to work to maintain that collaborative and productive relationship.

On behalf of the Committee, I submit this letter for comment on the above-referenced agenda item. The Committee supports the inclusion of the qualifying criteria "in the same calendar year" in line one of subsection (8). We understand that the exception set forth in subsection (8) is based on the rationale that a gift does not confer a personal benefit on a recipient when consideration of substantially equal or greater value is given by the recipient to the donor. We believe that requiring the exchange to take place within the same calendar year supports the purposes of the Act.

The Committee hopes the Commission will also consider one additional change to this regulation, or, perhaps a companion paragraph to address the troublesome issue of relatively minor gifts regularly exchanged between individuals as a normal function of social behavior, e.g., the exchange of picking up the tab at alternating lunches. The Committee believes that by expanding the range of subsection (8) or by adding an additional subpart to the subsection (8), that the regulation can recognize and exempt a very common equal exchange of gratuities without sacrifice to the goals of the Act.

The two alternatives the Committee discussed were as follows:

### Alternative 1

Subdivision 8 would be re-written as follows:

(8) Gifts exchanged in the same calendar year by an individual who is required to file a statement of economic interest and another individual, other than a lobbyist, to the extent that the value of gifts received by the official are less than the value of gifts given by the official in exchange on holidays, birthdays, or similar occasions to the extent that the gifts exchanged are not substantially disproportionate in value. For purposes of this subdivision, and notwithstanding regulation 18946.2(b), "gifts exchanged" includes food, beverages, and entertainment and nominal benefits provided at the occasion by the honoree or another individual, other than a lobbyist, hosting the event. If the official receives more value than they provided to the source, the balance is considered a gift under the Act.

This alternative would require the official to keep track of all exchanges from a single source and to claim any amount over \$50 as a gift from the source during the calendar. Because it considers all gifts from that source, it eliminates the distinction for gifts on special occasions. This is also consistent with the statutory definition of gift (govt. Code 82028).

### Alternative 2

In this alternative, subdivision (8) would have two subparts as follows:

(8) Gifts exchanged between an individual who is required to file a statement of economic interest and another individual, other than a lobbyist, which meet the following criteria:

(a) Gifts exchanged in the same calendar year on birthdays, holidays or similar occasions provided that the gifts received by the official are not substantially more valuable than the gifts given by the official. For purposes of this subdivision, and notwithstanding regulation 18946.2(b), "gifts exchanged" includes food, beverages, and entertainment and nominal benefits provided at the occasion by the honoree or another individual, other than a lobbyist, hosting the event, or

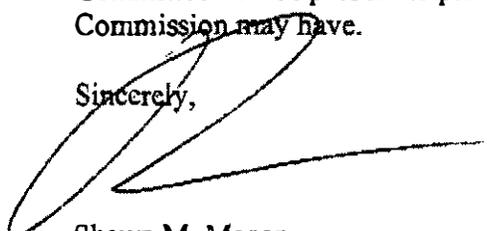
(b) Gifts exchanged on a regular basis in the same calendar quarter, limited to food, beverages, entertainment, and nominal benefits provided in conjunction with a social interaction with the donor.

The Committee believes that the proposed change to the regulation that recognizes essentially inconsequential reciprocal lunches and dinners is both a positive change and one that enhances and promotes the purposes of the Act. Alternative #2 limits the exchanges to situations where the donor is present and therefore could not be used if the exchange was a gift card, or an entertainment event where the donor was not present.

Currently, an argument can be made that under section 82028 an individual receiving a lunch paid by an individual and then reciprocating by buying dinner, does not have to claim a gift; however, there is no regulatory guidance for this very common occurrence. Another example would be that an individual invited to an entertainment event could provide the transportation and the meals at the event and therefore would not have to claim the entertainment as a gift because they provided equal or greater consideration. By defining within the regulation that the gifts so exchanged must occur within the same calendar quarter (or "same calendar month") the change both regulates the unregulated and clarifies how this very common exchange is to be handled.

I look forward to your consideration of our comments. My schedule does not permit my attendance at the Commission meeting on April 8. However, a member of our Committee will be present to participate in the process and answer any questions the Commission may have.

Sincerely,



Shawn M. Mason  
City Attorney  
City of San Mateo

cc: Scott Hallabrin  
Emelyn Rodriguez