



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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January 17, 2025

Aleks R. Giragosian
Senior Counsel
Colantuono, Highsmith & Whatley, PC
790 E. Colorado Blvd., Suite 850
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Re: Your Request for Informal Assistance

Our File No. I-24-133

Dear Mr. Giragosian:

This letter responds to your request for advice on behalf of City of Sierra Madre Planning Commissioner Christine Moran regarding the gift provisions of the Political Reform Act (the “Act”).¹ You have provided limited facts regarding the potential payments and benefits, so we treat 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

Is Planning Commissioner Moran prohibited from accepting payments for her admittance, lodging, meals, entertainment and other conference benefits provided at the March 2025 Amazon MARS conference on machine learning, artificial intelligence and space?

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

Because the facts indicate the conference is related to her business, trade or profession as an astrophysics engineer and employment as a Senior Engineering Manager, which does not generally involve speech making, to the extent that the payments for her lodging and food satisfy the criteria for her to claim a federal income tax deduction for business expenses for these items, the payments for food and lodging will not meet the definition of an honorarium or gift and are not subject to the Act's gift requirements. The payments will be reportable as income if they exceed \$500, and may prohibit Commissioner Moran from taking part in governmental decisions with a financial effect on Amazon. For other identified benefits provided to the attendees at the conference including entertainment and the swag bag, the benefits are not prohibited honorarium but are reportable gifts subject to the \$630 gift limit, and which may also require her disqualification from decisions with a financial effect on Amazon. Because the facts indicate that the three-day conference admission, events, music, and swag bag will likely exceed the \$630 limit, we caution that she may not be able to accept all of these gifts unless she reimburses Amazon for any costs of the gifts exceeding the aggregate value of \$630 in the calendar year or otherwise returns or donates the gifts in excess to a 501(c)(3) charitable organization within 30 days pursuant to Regulation 18941(c)).

FACTS AS PRESENTED BY REQUESTER

Commissioner Moran is a Senior Engineering Manager employed by Horizon3.ai. She is an astrophysics engineer and specializes in machine learning, artificial intelligence, and space. As a manager she oversees engineers building AI security technology. She does not generally give speeches as part of her job. Because of her profession, each year she is invited to attend the invitation-only Amazon MARS conference, organized by Amazon, on machine learning, artificial intelligence, and space. The conference will be held in 2025 at Space Coast, Florida from March 23rd to March 26th. She is not currently scheduled to be a speaker but might be if she is asked to speak at the conference.

This invitation-only conference embraces an optimistic vision for scientific discovery to advance a golden age of innovation. MARS attendees participate in hands-on learning, demos of emerging technology, and experiences where discovery leads to friendship. MARS guests include experts across machine learning, automation, robotics, and space. Attendees from academia, start-ups, and Fortune 100 companies gather to learn, share, and further imagine how these four fields of study will shape the future. It is attended primarily by private industry representatives. There are people from NASA (including astronauts), but Commissioner Moran isn't aware of other government officials attending outside of NASA personnel. She reads the attendee list and biographies every year, but in past years was not looking for government affiliation.

The MARS conference itself is a mix of academic talks and entertainment (events, hikes, and music) that everyone goes to as part of the conference to network. The entertainment happens during both business hours and after typical business hours. A "swag" bag is given to all attendees. In past years, the gifts have included a jacket, a bag, a hat, sunglasses, some sort of Amazon device (a Kindle has been in years past), and other miscellaneous small items.

You provided a screenshot of Commissioner Moran's email invitation, which states, "MARS is a non-commercial conference, and all expenses (excluding air travel) will be covered. If

you'd like to attend this invitation-only gathering, we require your attendance for the entire event." The conference does not charge a registration fee. Attendees pay for their own travel to and from the conference. Amazon covers the cost of lodging for each attendee. Amazon also provides meals, entertainment, and gifts for each attendee. The value of the accommodations and the value of the conference benefits both exceed the 2024 gift limit of \$590. Commissioner Moran indicated that she is unsure whether all attendees receive free admission, lodging, meals, entertainment and gifts.

ANALYSIS

Income, Honorarium & Gifts: General Rules.

Section 82030 generally defines "income" as a payment received, including but not limited to any salary, wage, advance, gift, reimbursement for expenses or per diem. "Earned income" includes income from wages, salaries, professional fees, and other amounts received or promised to be received as compensation for personal services rendered. (Section 82030.5(a).) The Act imposes reporting obligations on certain public officials, including planning commissioners, to disclose any income that aggregates to \$500 from the same source in the calendar year. (Section 87207(a).) The Act prohibits any public official from making, participating in making, or using their official position to influence the outcome of a governmental decision if it is reasonably foreseeable the decision will have a material financial effect on any interest the official may have, including any source of income with an aggregate value of \$500 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).)

Additionally, the Act prohibits payments to an official specified in Section 87200, a list that includes planning commissioners, that meet the definition of an "honorarium." Section 89501 defines an honorarium as a payment made in consideration for any speech given, article published or attendance at any public or private conference, convention, meeting, social event, meal, or like gathering. Excluded from this definition is earned income³ for personal services customarily provided in connection with the practice of a bona fide business, trade or profession, so long as the sole or predominant activity is not making speeches. (Section 89502(b)(1).)

The Act places the burden on the official to show that the official provided consideration of equal or greater value in return for the payment, and if such consideration is provided, then the payment is not a gift, but considered income. Equal consideration means that each party receives benefits of equal value. (*In re Burciaga* (1975) 2 FPPC Ops. 17.)

A gift 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

³ "Earned income" is generally defined as income from wages, salaries, professional fees, and other amounts received or promised to be received as compensation for personal services rendered.

the regular course of business to members of the public without regard to official status.

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by public officials in three ways. The Act places limitations on the acceptance of gifts by public officials listed in Section 87200. The gift limit requires that a planning commissioner not accept gifts from any single source in any calendar year with a total value of more than \$630. (Section 89503, Regulation 18940.2)⁴ So that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials, including planning commissioners, requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the official's statements of economic interests ("SEI Form"). (Section 87302(b)). The Act prohibits any public official from making, participating in making, or using their official position to influence the outcome of a governmental decision if it is reasonably foreseeable the decision will have a material financial effect on any interest the official may have including the source of any gift or gifts with an aggregate value of \$630 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).)

Payments for Travel

Generally, a payment for travel, which includes transportation, lodging, and food, is required to be reported as a gift and subject to the gift limits unless it is clear from all surrounding circumstances that the services provided were equal to or greater in value than the payments for the travel, in which case the travel may be reported as income. (Section 87207(c).) A travel payment for an official's attendance at a conference, such as the MARS conference, may meet the definition of a prohibited honorarium, unless an exception applies.

Under an exception for travel payments connected to a business, a payment made for transportation, lodging, or food is neither a gift nor honorarium if certain criteria are met. Travel payments in connection with a bona fide business, trade, or profession and which satisfy the criteria for federal income tax deductions for business expenses specified in Sections 162 and 274 of the Internal Revenue Code, for the official's business, is not an honorarium or gift unless the sole or predominant activity of the official's business, trade or profession is making speeches. (Section 89506(d)(3) and Regulation 18950.2.) In order to characterize the travel payment, we must first determine if this exception applies.

The determination of whether speechmaking is the predominant activity of a business, trade or profession occurs prior to each speechmaking opportunity. Regulation 18932.3 states that speechmaking is the predominant activity where more than fifty percent of the individual's business, trade, or professional hours or gross income is related to the delivery of speeches. Generally, the relevant time period for making the calculation is the 12-month period prior to and including the date of the speech for a business, trade, or profession in existence for one year or more. (Regulation 18932.3(b).)

⁴ The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. The current limit is \$630 for the January 1, 2025 – December 31, 2026 biennial period. (Section 89503(f); Regulation 18940.2.)

According to the facts, Commissioner Moran's profession as a Senior Engineering Manager does not generally involve speechmaking and she is currently not a speaker at the conference. Based on these facts, Commissioner Moran's business, trade or profession does not meet the "predominant activity" test. Therefore, to the extent that a payment would satisfy the business deduction criteria for a business expense for Commissioner Moran, the payments for food and lodging do not meet the definition of a gift or honorarium and she may accept the payments. Nonetheless, Commissioner Moran must report the payments as income to the extent the payments exceed \$500.⁵ Commissioner Moran will be prohibited from making, participating in making, or using her official position to influence the outcome of a governmental decision if it is reasonably foreseeable the decision will have a material financial effect on Amazon if it is a source of income aggregating \$500 or more provided or promised to Commissioner Moran within 12 months of the decision. (Section 87103(c).)⁶ If Commissioner needs additional assistance determining if she is disqualified from any future decision affecting Amazon, she may wish to seek additional advice identifying the specific nature of the decision.

Payments for Conference & Conference Benefits

Assuming that the travel payments meet the business expense exception, the remaining payments for attending the conference and conference benefits (entertainment, activities and swag bag) do not meet the definition of honoraria or income and will be "gifts." As noted above, the official has the burden to show that equal or greater consideration is provided in order to characterize a payment as income. The facts do not indicate that equal consideration is being provided for these benefits, nor are the benefits fully described.⁷ Further, where an individual attends a private conference without providing any substantive service, free admission, benefits other than cash, and food or beverages provided at a conference are not honoraria, but may be reportable gifts. (Regulation 18932.4(f).)

⁵ Regulation 18950, regarding travel payments states that a travel payment made under any exception provided in Regulations 18950.1 through 18950.3 is not a gift or honorarium and subject to reporting only as specified in those regulations. However, this does not negate the Section 87207(c) requirement that the payment be reported as a gift unless it is clear that the services provided were equal to or greater in value than the payments for travel in which case it may be reported as income. (See for example, *Conover* Advice Letter, No. A-02-207, interpreting former Regulation 18950.1(e) [renumbered to Regulation 18950.2 in 2013] finding that payments for travel, lodging and subsistence in connection with the official's bona fide profession are not honorarium or gift, if the business expense exception is met, but are reportable income.

⁶ We caution that the assistance contained herein is based on the determination that the payment for food and lodging meet the business expense exemption. If the payments do not satisfy the criteria for federal income tax deductions for business expenses, payments for food outside of the conference or conference-wide activities, and payments for lodging may be prohibited honorarium. If the business expense exception does not apply, Commissioner Moran may wish to seek additional advice.

⁷ Commissioner Moran may wish to seek further advice regarding conference activities that may constitute income once the activity can be fully identified, and she can provide a full description of any consideration she may provide in return for the benefits.

Valuing Gifts

The payments that have been identified for entertainment and the swag bag, which do not fall under the business expense exception, will be “gifts” valued at a fair market value or, if provided to all attendees, at her pro-rata share. Commissioner Moran will need to determine the value of the gifts and ensure that they do not exceed the \$630 gift limit. You have indicated that Commissioner Moran does not currently know if all guests receive free admission, meals, entertainment, and gifts.

Generally, a gift is valued by determining its fair market value. (Regulation 18946(a).) Additionally, when an official attends an invitation-only event, Regulation 18946.2(b) states that the admission value of the event is the official’s and a 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, such as a golf green fees, provided to the official and guest at the event, is valued at fair market value rather than at a pro-rata share. (Regulation 18946.2(b).) 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. (Regulation 18946.2(c).)

The three-day MARS conference is a mix of academic talks and entertainment (events, hikes, and music) that everyone goes to as part of the conference to network. The entertainment happens during both business hours and after typical business hours. A “swag” bag of substantial gifts (jackets, hats, sunglasses and an item such as a Kindle) is given to all attendees. Based on the facts provided, this event is an invitation-only event. For purposes of the academic talks, activities, food, catering services, entertainment, and any item provided to the official and other invited guests that is available to all guests attending the event, the valuation of the gifts received will be Commissioner Moran’s pro-rata share of the costs, minus food and lodging that qualify as deductible business expenses and are exempt from the gift limit under Regulation 18950.2 as discussed above. Additionally, if provided any other item or payment not received by the other invited guests (and not exempt under Regulation 18950.2), Commissioner Moran must aggregate the value of the item or payment with the value of the invitation-only event to determine the value of the gifts she has been provided.

It appears from the facts that the value of the three-day conference benefits are likely to exceed the \$630 gift limit. However, the specific nature of the academic talks, activities, events and entertainment that will be provided, as well as the “swag” bag items have not been identified, nor is there an estimate of the costs of these items. Accordingly, we can only generally caution that the gift limit requires that Commissioner Moran not accept gifts from Amazon in any calendar year with a total value of more than \$630. (Section 89503, Regulation 18940.2) To the extent that the value of all gifts received from Amazon is more than \$630. Commissioner Moran may only attend the conference if she reimburses Amazon for any portion of the gifts exceeding \$630, or otherwise

returns or donates the gifts in excess to a 501(c)(3) charitable organization within 30 days of acceptance pursuant to Regulation 18941(c).⁸

Please note, in the event Commissioner Moran receives gifts from Amazon that have a value or cumulative value of \$50 or more, she must disclose the gifts on her SEI Form. Additionally, Commissioner Moran will be prohibited from making, participating in making, or using her official position to influence the outcome of a governmental decision if it reasonably foreseeable the decision will have a material effect on Amazon if it is the donor of a gift or gifts with an aggregate value of \$630 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).) As stated above, if Commissioner Moran needs additional assistance regarding the application of conflict of interest prohibitions to a future decision affecting Amazon, she may wish to seek additional advice identifying the specific nature of the decision.

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

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

KH:aja

⁸ We note that Commissioner Moran may also be able to reduce the valuation of the gifts received by declining any specific item provided to her, including those items provided to invited guests in the “swag” bag.