



FPPC Update

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FPPC UPDATE- NEW REGULATIONS AND OTHER DEVELOPMENTS

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INTRODUCTION

This paper provides an update on significant developments concerning the Political Reform Act of 1974 (California Government Code sections 81000 et seq.) and the activities of the Fair Political Practices Commission (“FPPC”) in interpreting and applying the Act. This review addresses developments from April 2013 through August 2013.

I. AMENDMENTS TO THE FPPC REGULATIONS

Regulation 18700

What has changed?:

Government Code section 87100 establishes the central conflict of interest rule in the Political Reform Act. The FPPC regulations that define the key terms of this rule are found in the series of regulations that begin with Regulation 18700. In the 1990’s, the FPPC substantially revised this series to organize the regulations around an 8-step process for analyzing conflict of interest questions. In April, the Commission adopted a new regulation 18700.

This new section contains the definition of key terms used in the conflict of interest series of regulations, and outlines a new, 4-step approach for analyzing conflict of interest questions. The adoption of the revised regulation 18700 is the first step in a series of actions to rewrite the conflict of interest series as part of the Commission’s regulation clarification project. While this regulation has been adopted, it will not go into effect until the review and adoption of revisions to the remainder of this series has been completed.

Significance: The 8-step conflicts of interest analysis was well received by city attorneys as a means of organizing their approach to conflict of interest questions. Once it is completed, the new, 4-step approach will serve as the guide for responding to conflict of interest questions.

Travel Payment Regulations

Regulation 18944

What has changed?

Located in the gift regulations, this regulation describes the exception to the gift rule for donations to a public agency that provide a benefit to a public official. The regulation previously contained a number of provisions that relate to travel payments provided to a public agency. The regulation has been amended to remove these references so that the regulation will now only address donations to a public agency that do not involve travel. The travel related payments have been relocated to the 18950 series of regulations.

In addition, the regulation has been amended to modify the reporting requirements for payments to agencies. Now, an agency need only post reports of such payments on the agency website if the total amount of payments received in a quarter equals or exceeds \$2,500.

Significance: This regulation makes no significant substantive changes to the regulations. Instead, it removes and relocates those provisions relating to the donation of travel payments to the series of regulations on travel payments.

Regulation 18950

What has changed?

This regulation has been amended to provide the outline and definition of key terms for the travel payment regulations. The regulation also clarifies that travel payments under Government Code section 89506 are treated differently than other travel payments and are to be reported as gifts, even though they are not subject to the gift limit.

The regulation also has been amended to make clear that travel payments for the purposes described in the regulations that follow (18950.1, 18950.2, and 18950.3) do not provide a personal benefit to an official, and, therefore, are not considered gifts.

The regulation adds a new exception for travel shared by officials when they are attending the same event.

Finally, the regulation relocates provisions previously found in 18950.3 to this regulation.

Significance: This regulation adds a new exception for shared travel and reorganizes and clarifies the provisions of the travel payment regulations.

Regulation 18950.1

What has changed?

This new regulation contains the bulk of the FPPC's effort to clarify the treatment of travel payments that are not considered gifts to an official. The regulation combines the notion that payments for travel by a public official will not be considered a gift if they are made for the benefit of the official's agency with the concept that such benefits confer no "personal benefit" upon the traveling official.

Most of the provisions of this new regulation have been taken from the former Regulation 18944. The regulation has been modified in two significant ways. First, the previous ban on this type of travel payment for elected officials and 87200 filers has been removed. These officials may qualify for travel payments "directly related to their official duties" and that otherwise meet the criteria spelled out in the regulation. In addition, the regulation has been amended to relax the strict per diem rule previously in effect. Before this amendment, an official accepting travel payments could only accept payments that were consistent with the per diem reimbursement rules enacted by the official's agency. Lodging or meals that exceeded the agency's policy would be considered a gift to the official. Now, the official may accept the lodging and meals provided to the other event attendees, even if the value of such lodging and meals exceeds the official's agency's per diem limits.

Significance:

This regulation significantly relaxes the rules with respect to public official travel paid for by third parties. Payments may now be made to pay for travel by elected officials and 87200 filers under certain circumstances, and traveling officials may accept certain meals and lodging, even if their value exceeds that which would have been reimbursed under the agency reimbursement rules.

Regulation 18950.2

What has changed?

This regulation has been added to highlight the pre-existing exception for travel payments provided in connection with a bona fide business unrelated to the official's public duties.

Significance:

This is being done to raise awareness of this exception, and makes no substantive changes to the rule.

Regulation 18950.3

What has changed?

Most of the provisions of this regulation have been relocated to regulation 18950. The new regulation 18950.3 now contains the regulations relating to campaign travel that were previously found in Regulation 18727.5. This amendment was made to bring the rules on campaign travel into the travel payment series of regulations.

Significance: This amendment makes no substantive change, and simply brings the campaign travel rules into the travel regulation series.

II. REGULATION CLARIFICATION PROJECT

The FPPC is continuing its efforts to clarify the regulations promulgated by the Commission. The FPPC has completed revisions to the gift rules, and has begun the review of the conflict of interest regulations. It is anticipated that in the coming months Commission staff will develop and present for adoption new rules for determining when impacts on real property and business interests will be deemed “material.”

III. OTHER DEVELOPMENTS- A New Chair?

In February 2011, Governor Brown appointed Ann Ravel FPPC chair. Chair Ravel came to the position following a lengthy career as a local government attorney, and she has worked to involve local government attorneys and other stakeholders in efforts to improve the FPPC regulations. In June, President Obama nominated Ms. Ravel to the Federal Elections Commission. Appointment to the FEC must be confirmed by the United States Senate. Chair Ravel continues to serve during the confirmation process.