

July 12, 2011

Thomas E. Montgomery  
County Counsel  
County of San Diego  
160 Pacific Avenue, Room 355  
San Diego, California 92101-6005

Re: Your Request for Advice  
**Our File No. A-11-099**

Dear Mr. Montgomery:

This letter responds to your request for advice regarding the gift limit and reporting provisions of the Political Reform Act (the "Act").<sup>1</sup> This letter is based on the facts presented; the Fair Political Practices Commission ("the Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### **QUESTION**

Are parking cards issued by the San Diego Airport Authority that allow the cardholders to use parking facilities at the San Diego Airport at no charge, provided the cardholder is on official business, a gift to the San Diego County officials to whom the county provides these cards when the official would be entitled to reimbursement for any parking expenses incurred absent the use of the cards?

### **CONCLUSION**

No. You noted that the parking cards may be used for official business only and the official is entitled to reimbursement from the county for any parking fess incurred on official business. So long as those conditions are met the parking cards do not provide a personal benefit and therefore do no meet the definition of "gift" under the Act.

### **FACTS**

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<sup>1</sup> 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 18110 through 18997 of Title 2 of the California Code of Regulations. All

San Diego Regional Airport Authority issues airport parking cards under a policy whereby San Diego County receives a certain number of these cards, that allow the cardholders to use the parking facilities at the airport at no charge, provided the cardholder is on official business. The county issues these cards to the members of the Board of Supervisors (one member has declined to accept), the District Attorney, Treasurer-Tax Collector, Sheriff, and the Chief Administrative Officer. Absent the use of the card, the cardholder would have to pay the parking fee and then submit a travel claim for reimbursement from the county.

### ANALYSIS

In an effort to reduce improper influences on public officials<sup>2</sup>, the Act regulates the receipt of gifts by public officials in three ways:

First, so that the public is made aware of any potential influences from gifts, 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 are disclosed on the officials' statements of economic interest. Reporting requirements apply to all officials listed in Section 87200 (Section 87202), all candidates for an office specified in Section 87200 (Section 87201), and employees designated in an agency's conflict-of-interest code as specified in the code (Section 87302(b)).

Secondly, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$420 from a single source in a calendar year. (Section 89503; Regulation 18940.2.) This gift limit applies to all elected state and local officials or other individuals designated in Section 87200; all candidates for state, local, or judicial office; and any employee designated in his or her agency's conflict-of-interest code, as adopted pursuant to Section 87300, if the employee would be required to disclose the receipt of income or gifts from the source of the gift on his or her statement of economic interest. (Section 89503.)

Finally, the Act prohibits any public official from making, participating in making, or using his or her official position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$420 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, 87103(e), Regulations 18700, 18703.4.)

The term "gift" is defined in 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

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<sup>2</sup> A "public official" is "every member, officer, employee, or consultant of a state or local governmental agency." (Section 82048.)

made in the regular course of business to members of the public without regard to official status.”<sup>3</sup> (Emphasis added.)

Because the cardholder may only use the card on official county business, and the cardholder is entitled to reimbursement from the county for any parking fees incurred while on official business, the official has not received any personal benefit. Therefore, the payment is not a gift under the Act.<sup>4</sup>

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

John W. Wallace  
Assistant General Counsel

By: William J. Lenkeit  
Senior Counsel, Legal Division

WJL:jgl

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<sup>3</sup> Section 82044 defines payment, in part, as any “rendering of . . . services or anything else of value, whether tangible or intangible.”

<sup>4</sup> We note that the San Diego Regional Airport Authority (SDRAA) is a lobbyist employer. While the parking passes are not gifts to the officials above, nothing in this letter should be construed to imply that the passes do not have to be listed as expenditures if provided to any state officials that the SDAA lobbies.