

SACRAMENTO

400 Capitol Mall, 27th Floor
Sacramento, CA 95814
T: 916.321.4500
F: 916.321.4555

BAKERSFIELD

1675 Chester Ave., Ste. 320
Bakersfield, CA 93301
T: 661.864.3800
F: 661.864.3810

SAN LUIS OBISPO

1432 Higuera Street
San Luis Obispo, CA 93401
T: 805.786.4302
F: 805.786.4319

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California Fair Political Practices Commission Issues New Regulation To Govern Gifts Of Event Tickets And Passes

The California Fair Political Practices Commission ("FPPC") recently issued a new regulation to govern gifts of tickets and passes to an event. The new regulation, Regulation 18944.1, contains detailed requirements for reporting gifts to public officials of tickets or passes to events.

Section 18944.1 defines a ticket or pass as "admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose." Under the regulation, if a ticket or pass is provided to an official for the official to be able to attend an event at which he or she will perform a ceremonial role or function on the agency's behalf, the ticket or pass is not a gift to that official.

When an agency provides a ticket or pass to an official of that agency, the ticket or pass is not subject to section 18944.1's restrictions as long as the official treats the ticket or pass as income for tax purposes and the agency also reports the distribution of the ticket or pass as income paid to the agency official.

If the agency-provided ticket or pass meets the definition of a gift under California Government Code section 82028 and is not exempt under FPPC regulations, the official will "meet the burden under Section 82028 that equal or greater value has been provided in exchange therefore" if the following requirements are met:

(1) If the ticket is from an outside source and is provided to the official by his or her agency, it must be shown that "[t]he ticket or pass is not earmarked by the original source for use by the agency official who uses the ticket or pass;" the agency must have the sole discretion to determine which agency official may use the ticket or pass; and the distribution of the ticket or pass must be made in accordance with the agency's written policy.

(2) If the ticket or pass is provided to the official by his or her agency, the ticket or pass must have been obtained by the terms of a contract for use of public property, because the agency controls the event, such as a fair, or the agency purchased the ticket at its fair market value. The distribution of the ticket must also have been made in accordance with the agency's written policy.

The distribution by an agency to its officials of tickets or passes must be made pursuant to a written policy that has been adopted by the agency's legislative or governing body. The written policy must "state the public purpose to be accomplished by the agency policy." If the agency has a website, it must prominently post the written policy on its website. The written policy must contain (1) a provision that states the public purposes to be accomplished through distribution of tickets or passes; (2) a provision that requires "that the distribution of any ticket or pass by the agency to, or at the behest of, an official accomplish a public purpose of the agency;" and (3) a provision that prohibits any official from transferring a ticket or pass that has been provided by the agency to any other person, except for the official's immediate family members, for their personal use.

If an agency provides a ticket or pass to an agency official that meets the definition of a gift under Government Code section 82028, the distribution of the ticket or pass must be posted on a FPPC form to the agency's website within 30 days after the ticket or pass is distributed. If the agency does not have a website, it must maintain the form as a public record and also forward the form to the FPPC for posting on its website. The posting must include the name of the person receiving the ticket or pass, or if an organization outside the agency is receiving the ticket or pass, the name and address of that organization, a description of the event, the face value of the ticket or pass, the number of tickets provided to each

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person, if applicable, the official who asked for the ticket, and a description of the public purpose for which the ticket was distributed.

The provisions which require reporting of the value of the ticket as income or as a gift apply only to the benefit received by admission to the event but not to any benefits that "the official may receive that are not included with the admission, such as food or beverages, or any other item presented to the official at the event."

Questions

If you have any questions concerning the content of this Legal Alert, please contact the following from our office, or the attorney with whom you normally consult.

Mona Ebrahimi or Diana Halpenny |
916.321.4500