

December 23, 2003

SDEC Informal Advice Letter No. IA03-11

Kimberly Hale
Director of Community Relations
San Diego Film Commission
1010 Second Avenue, Suite 1500
San Diego, CA 92101

Re: Request for Informal Advice Regarding Distribution of Screening Passes

Dear Ms. Hale:

This advice letter has been prepared in response to your letter to the City of San Diego Ethics Commission dated December 15, 2003. You are seeking advice from the Ethics Commission interpreting the provisions of the City's Ethics Ordinance, which is contained in the San Diego Municipal Code [SDMC]. Your letter asks general, hypothetical questions, and accordingly we consider your letter to be a request for informal advice.

QUESTIONS

1. Is there a monetary value associated with the screening passes distributed by the Film Commission to City Officials and, if so, what is that value?
2. Is the distribution of screening passes a violation of the City's Ethics Ordinance?

SHORT ANSWERS

1. If there are no costs incurred by the Film Commission for a particular screening, then there is no monetary value associated with the screening passes. If, on the other hand, the Film Commission incurs some costs in connection with a screening, then the value of each pass is equal to the per person cost incurred by the Film Commission.
2. The Ethics Ordinance prohibits the acceptance of gifts from a single reportable source in excess of \$340 per calendar year. SDMC § 27.3520. Therefore, a City Official is not permitted to accept screening passes valued in excess of this limit from the Film Commission, if the Film Commission is a reportable source for that official.

BACKGROUND

According to the information you provided, the Film Commission receives screening passes for upcoming movies from publicity departments at various motion picture studios. These passes are provided to the Film Commission at no cost in order to test audiences around the country before a film debuts. The Film Commission typically distributes the screening passes to various members of the public, including City Officials. According to the information you provided, the Film Commission exercises discretion concerning the distribution of passes, and is not subject to the direction or control of the studios with regard to how the passes are distributed. You have stated that these passes have no face value and cannot be exchanged for another movie or screening. Additionally, because the passes may be used only on a first-come, first-served basis, recipients are not guaranteed seating.

You indicated that the Film Commission typically does not incur any costs associated with the screenings. In the past year, however, there were exceptions involving two screenings at which the Film Commission provided popcorn, candy, and soda to individuals at the screening. According to your letter, the value of these refreshments was approximately \$10 per person.

ANALYSIS AND CONCLUSION

A. Value of Passes

The Fair Political Practices Commission [FPPC] has issued a regulation governing the valuation of tickets to one-time events. The basic rule contained in this regulation provides that the face value of a ticket shall serve as the basis for establishing the value of that ticket. The FPPC regulation provides:

A pass or ticket which provides one-time admission or access to facilities, goods, services, or other incidental tangible or intangible benefits (including a pass to motion picture theaters, amusement parks, parking facilities, country clubs, and similar places or events, and also including a ticket for theater, opera, sporting, or similar event, but not including travel or lodging) shall be valued at the face value of the pass or ticket, provided that the face value is a price that was, or otherwise would have been, offered to the general public. A pass or ticket has no value unless it is ultimately used or transferred to another person.

Cal. Code Regs. tit. 2, § 18946.1(a).

In fact, the screening passes you provided to our office have no face value, i.e. no price is printed on the pass. Your letter indicates that these passes are given away free to test audiences before a film debuts. The FPPC has promulgated a rule for establishing the value of gifts with no face value:

Whenever the fair market value cannot readily be ascertained because the gift is unique or unusual, the value shall be the cost to the donor, if known or ascertainable. If the cost to the donor is unknown and unascertainable, the recipient shall make a reasonable approximation. In making such an approximation, the recipient shall take into account the price of similar items. If similar items are not available as a guide, a good faith estimate shall be utilized.

Cal. Code Regs. tit. 2, § 18946.

Based on the above regulation, if the Film Commission incurs no costs in connection with a screening, then the passes it distributes for that screening have no value as a gift. If, on the other hand, the Film Commission provides refreshments for which it incurs a cost of \$10 per person, then the monetary value of each pass is \$10. For this reason, when the Film Commission incurs costs in conducting a screening, it may wish to inform invited City Officials of the value of the passes to that screening.

B. The Film Commission is the Source of the Gift

The costs incurred by the studios in connection with the screenings are not relevant to this analysis because, according to information you supplied, the studios do not direct the Film Commission how to distribute the passes. According to a regulation issued by the FPPC, a “person is the source of a gift if the person makes a gift to an official and is not acting as an intermediary.” Cal. Code Regs. tit. 2, § 18945. This regulation also provides that, “[i]f a person makes a payment to a third party and in fact directs and controls the use of the payment to make a gift to one or more clearly identified officials, the person is the source of the gift to the official or officials.” *Id.* at subsection (a)(1). Because the studios do not direct and control the Film Commission’s distribution of the passes, the studios would not be considered the source of a gift to a City Official, and any costs the studios incur in connection with the screenings are not relevant to whether a City Official is receiving a gift by accepting a pass.

C. Reportable Sources

Certain City Officials, including all of the City’s elected officials, are considered “High Level Filers,” and have broad reporting requirements. SDMC § 27.3520. These officials must report their acceptance of gifts from any source. Other City Officials with reporting obligations are called “Local Code Filers” and are required to report gifts they receive from sources identified on the conflict of interest code applicable to their position in City government. The Film Commission may fall within a category of entities identified on an official’s conflict of interest code, and if so, that official is required to disclose the acceptance of gifts from the Film Commission. In such instances, City Officials must be mindful of their reporting obligations and the applicable gift limits, as set forth below.

D. \$50 Reportable Threshold / \$340 Limit

According to the City's Ethics Ordinance, a gift from a reportable source generally does not need to be reported unless it has a fair market value of \$50 or more, or unless the aggregate value of multiple gifts from the same source is \$50 or more in the same calendar year. SDMC § 27.3526. In other words, if the Film Commission is a reportable source for a City Official, and that official accepts and uses passes worth \$50 or more from the Film Commission within the same calendar year, then the passes must be reported as gifts on the official's Statement of Economic Interests.

In addition, it is unlawful for a City Official to accept gifts in excess of \$340 from a single reportable source in the same calendar year. SDMC § 27.3520; Cal. Gov't Code § 89503. For this reason, if the Film Commission is a reportable source for a City Official, then that official is not permitted to accept more than \$340 worth of screening passes (or other gifts) from the Film Commission during a calendar year.

E. Control and Use of Passes

It is important to keep in mind that a City Official receives a gift when "he or she has either actual possession of the gift or takes any action exercising direction or control over the gift." Cal. Code Regs. tit. 2, § 18941(a). For this reason, "turning a gift over to another person does not negate receipt or acceptance of a gift." Code Regs. tit. 2, § 18941(a)(3); SDMC § 27.3522. Therefore, if the Film Commission gives a pass valued at \$10 to a City Official, and the City Official gives that pass to a member of his or her staff, the City Official is still considered to have received a \$10 gift from the Film Commission.

You indicated in your letter that seating at these film screenings is not guaranteed. Accordingly, if a City Official was turned away from a screening due to a lack of available seating, the pass would be considered unused and the City Official would not have received a gift. SDMC § 27.3525(m). For the same reason, if a City Official throws the passes away, no gift has been received, and no gift need be reported. *Id.*

F. Ceremonial Role Exception

In your letter, you mention that the Film Commission has invited City Officials to screenings in order for them to meet with industry representatives who are in attendance. There is an exception to the gift rules for tickets or passes provided to an official in instances where the official has "an official or ceremonial role or function to perform on behalf of the agency at the event in question." Cal. Code Regs. tit. 2, § 18944.1. The act of a City Official attending a screening and simply being introduced to industry representatives does not rise to the level of performing an official or ceremonial function. In order for this exception to apply, the City Official would need to participate in some type of official act on behalf of the City at the screening (such as being publicly introduced at the event and thanked for supporting the film industry in the City).

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I hope this letter sufficiently answers your questions. If you require additional assistance, please contact our office.

Sincerely,

Stacey Fulhorst
Executive Director

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