

January 30, 2002

CEC Advice No. 2001-19

Advice Provided to Ms. Martha Waltz
Director of Communications
Office of Councilmember Dennis P. Zine

This letter is in response to your original letter to the City Ethics Commission dated November 20, 2001, and subsequent letter dated November 28, 2001. Those letters requested formal advice¹ regarding whether staff members of Council District 3 must pay for tickets to ride on the Metrolink Holiday Toy Express on November 30, 2001. Because of the short time frame between your letters requesting advice and the date of the Holiday Toy Express ride, you received verbal advice on this matter from Nora Pollock on November 30, 2001. This letter provides confirmation of the advice given on that date in addition to providing formal advice on your question. Your question and the Commission's response, based on the information provided in your letters and conversations with Ms. Pollock on November 28, 2001, as well as Ms. Pollock's conversations on November 27, 2001, with James Okazaki, Assistant General Manager of the Department of Transportation's Office of Transportation Programs and on November 28 and 29, 2001, with Lupe Valdez, Community Relations Administrator at Metrolink, are detailed below.

QUESTION

Are staff members of Council District 3 required to purchase tickets to ride the Metrolink Holiday Toy Express?

RELEVANT FACTS

We have determined that the following facts are relevant to your inquiry:

1. The Metrolink Holiday Toy Express is a charity event sponsored by Metrolink that features a cast of "holiday" characters riding on a Metrolink train from Union Station to

¹ Los Angeles Admin. Code § 24.1.1(f)(2)(K) provides that formal written advice provides the requestor with the immunity set forth in Los Angeles City Charter § 705. This formal advice does not address or apply to any past actions by the requestor(s).

Chatsworth in conjunction with a toy drive sponsored by firefighters in the Los Angeles metro area. A small number of firefighters participating in the event join the cast of characters on the Holiday Toy Express train. Light refreshments are provided on the train. The cast of characters and firefighters disembark the Holiday Toy Express onto platforms at stations between Union Station and Chatsworth to visit with children and hand out candy canes. There is an approximately 20-minute long entertainment program at each platform. At this time the firefighters also collect toys for the toy drive. Toys are distributed throughout the areas represented by the firefighters.

2. The Metrolink Holiday Toy Express is not a regularly scheduled commuter train available for the public to ride. No members of the public ride on it as a means of commuting. As such, no fare is collected by Metrolink for the cast of characters and firefighters to ride on the Holiday Toy Express.
3. This year, some staff members of the Office of Councilmember Dennis Zine will ride on the Holiday Toy Express along with firefighters and the cast of characters to represent Council District 3 in the event. Some staff members will ride the Express from Union Station to Chatsworth; some will board the Express in Northridge and continue to Chatsworth. Councilman Zine will not ride the Holiday Toy Express but will be present at the last stop in Chatsworth to represent his district with the collection of toys. A portion of the toys collected will be donated to children in Council District 3. The staff members will not ride back to Northridge or Union Station from Chatsworth.
4. The value of a regular one-way ticket from Union Station to Chatsworth on Metrolink is \$6.00. The value of a one-way ticket from Northridge to Chatsworth on Metrolink is \$4.00.
5. Metrolink currently has a contract with the City of Los Angeles Department of Transportation and, as such, is doing business with the City.

ANALYSIS & CONCLUSION

The state's Political Reform Act and the City's Governmental Ethics Ordinance regulate the receipt of certain gifts to City officials – that is, anyone who is required to file a Statement of Economic Interests by the Conflict of Interest Code of his or her agency. These regulations are designed to help City officials avoid the appearance of being influenced by outside entities in their decisions on City matters. The Governmental Ethics Ordinance designates some City Officials as High-Level Officials. High-Level Officials are subject to more stringent ethics rules, including more stringent gift restrictions.

One category of gift restrictions relates to gifts from entities that are “restricted sources” to the recipient. Whether an entity is a restricted source to a City official depends in part on whether he or she is a designated High-Level Official in his or her office or agency. For High-Level Officials, a “restricted source” includes, among others, an entity that does or seeks to do

business with *any* City Agency. According to this provision, High-Level Officials are limited to accepting gifts totaling not more than \$100 from a single restricted source. For other City officials, that restriction would apply only if the entity does or seeks to do business with *that City Official's agency*.² In the case of a Council deputy, the agency is that deputy's Council office.

The first question to address is whether the rides on the Metrolink Holiday Toy Express qualify as gifts to you and the other staff members. You indicated that the Metrolink train used for the Holiday Toy Express is not open to the public to use as a regular commuter train. You have not told us whether or not you and the other staff members will be providing any services during the trip. We therefore do not have a factual basis to conclude that you would be providing sufficient consideration so that the rides would not be considered gifts. The value of the gift of a ride is determined by the cost of a regularly priced ticket from the station of origination to the final destination.

The second question to address is whether Metrolink is a restricted source to the staff members riding the Holiday Toy Express. Because Metrolink is currently doing business with the Department of Transportation, it is a restricted source to the designated High-Level Officials in your office because those Officials' restrictions include a source doing business with *any* City agency. Metrolink is not a restricted source to regular City officials in your office because Metrolink is not doing business with the Third Council District.

We have concluded that staff members may accept a ride on the Holiday Toy Express as a gift from Metrolink and are not required to purchase tickets for the value of the ride unless accepting this gift would exceed the gift limits for a staff member. In that case, the staff member would not be allowed to accept the gift and would be required to purchase his or her ticket. Furthermore, the refreshments provided on the train are considered gifts, and the approximate value of the refreshments should be counted along with the value of the Metrolink train ticket to estimate the total value of the ride on the Holiday Toy Express.

Please be aware that the total value of the gift of a ride on the Holiday Toy Express, including refreshments, counts toward the gift limit for each staff member who takes the ride. Accordingly, each staff member should record and keep track of the value of this gift so as to not exceed the limits.

Thank you for contacting the City Ethics Commission about this matter.

Attachment
Enclosures

² Gifts received by a City official from a source that is not restricted may still have to be reported on that official's Statement of Economic Interests if the value of that or cumulative gifts during the year exceed \$50 from the source. Additionally, gifts from any source that is not a restricted source and are required to be reported on any City official's Statement of Economic Interests are subject to a \$320 limit.

ATTACHMENT

Los Angeles Municipal Code §49.5.2 Definitions, defines the following terms:

“Agency” means the City of Los Angeles or any department, bureau, office, board, commission, other agency of the City, or any other government agency, required to adopt a conflict of interest code subject to City Council approval.

“City Official” means any elective City officer, member, officer, employee, commissioner or consultant of any agency required to adopt a conflict of interest code subject to City Council approval, and who is required to file statements of economic interests pursuant to the conflict of interest code of his or her agency.

“Doing Business with the City” means entering into or performing pursuant to a contract with the City of Los Angeles, an agency of the City or another local government agency required to adopt a conflict of interest code subject to City Council approval. Doing business with the City includes entering into or performing contracts for goods, equipment, services or financial assistance but does not include the receipt of or payment for services normally rendered by the City to residents and businesses such as sewer service, water and power, street maintenance and the like.

“Gift” means, except as otherwise provided in this definition, any payment 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 the regular course of business to members of the public without regard to official status. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value.

“High Level Official” in pertinent part, means two members of the staff of each City Council Office possessing the most decision-making responsibilities relative to governmental policy as designated by each member of the Council.

“Restricted Source” in pertinent part, means the following with regard to each of the following classes of City Officials:

- 1) With regard to “high level filers” and “high level officials:”
 - (a) a person doing or seeking to do business with the City;
- 2) With regard to filers other than “high level filers and with regard to officials other than “high level officials:”
 - (b) a person seeking to do business with the filer’s agency.

Los Angeles Municipal Code §49.5.10 Restrictions on Gifts and Travel Expenses, in pertinent part, states:

A. Restrictions on Gifts.

1. No person shall offer or make, and no City official shall solicit or accept, any gift with the intent that the City official will be influenced thereby in the performance of any official act.
2. No City official shall knowingly solicit any gift from a restricted source.
3. Except in the case of a lobbyist or lobbying firm, no person who is a restricted source shall offer or make, and no City official shall accept, any gift from a restricted source which would cause the cumulative amount of gifts from such source to the City official to exceed \$100 during any calendar year.

California Political Reform Act §89503 Gift Limits, in pertinent part, states:

- (c) No member of a state board or commission or designated employee of a state or local government agency shall accept gifts from any single source in any calendar year with a total value of more than two hundred fifty dollars (\$250) if the member or employee would be required to report the receipt of income or gifts from that source on his or her statement of economic interests.
- (f) Beginning on January 1, 1993, the Commission shall adjust the gift limitation in this section on January 1 of each odd-numbered year to reflect changes in the Consumer Price Index, rounded to the nearest ten dollars (\$10).

California Code of Regulations §18946 Reporting and Valuation of Gifts, in pertinent part, states:

- (a) Scope of Section. Except as specified in California Code of Regulations, Title 2, Sections 18946.1 through 18946.5, inclusive, gifts shall be valued at fair market value as of the date of receipt or promise. Sections 18946.1 through Section 18946.5 provide for the valuation of specific types of gifts in the following situations:

Passes and Season Tickets -- Regulation 18946.1

Testimonial Dinners and Events -- Regulation 18946.2

Wedding Gifts -- Regulation 18946.3

Tickets to Nonprofit and Political Fundraisers -- Regulation 18946.4

Prizes and Awards From Bona Fide Competitions -- Section 18946.5

- (b) General Rule for Valuation of Unique Gifts. 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.
- (c) Except as specified in California Code of Regulations, Title 2, Sections 18943, 18944, and 18946.1, a gift must be valued, for purposes of disclosure and disqualification, even if unused, discarded or given to another person.

California Code of Regulations §18946.1 Reporting and Valuation of Gifts: Passes and Tickets, in pertinent part, states:

- (a) 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.