

California Fair Political Practices Commission

Funding for a Candidate’s “Inauguration Event”

The funding of “inauguration events” for elected candidates¹ raises several issues under the Political Reform Act (the “Act”).² Below are answers to frequently asked questions on “inauguration events.” The purpose of this fact sheet is to provide general guidance. Therefore, Commission advice on these issues may vary according to the specific facts of a particular situation.

What is an “inauguration event” for purposes of this discussion?

For purposes of this discussion an “inauguration event” is a privately funded event conducted in conjunction with the formal inauguration or swearing-in of a candidate elected to public office.

Generally, when the governmental agency to which a candidate is elected pays for events in connection with that candidate’s formal inauguration or swearing-in, those payments are not regulated by the Act, and those publicly funded payments are not addressed in this discussion.³

May a candidate elected to public office use his or her campaign funds to pay for the candidate’s own inauguration event?

Yes. Section 89512 requires that campaign funds be used only for purposes that are *reasonably* related to a political, legislative, or governmental purpose. If the use confers a substantial personal benefit, however, it must be *directly* related to a political, legislative, or governmental purpose. Nonetheless, Section 89513(f)(3) specifically states that an “election victory celebration or similar campaign event...[is] considered to be *directly related* to a political, legislative, or governmental purpose.”

Therefore, a candidate may use campaign funds leftover after an election to pay for an inaugural event or may use funds from an officeholder account for this purpose. If campaign funds are used, however, they must be expended from either a campaign account established for election to that office (Section 85201 and Regulation 18525) or from an officeholder account

¹ An individual who is a “candidate” retains that status until he or she leaves office and terminates that status by filing the appropriate campaign reports under Government Code Section 84214. Therefore, for purposes of this discussion a “candidate” includes an individual who has been newly elected to office but does not yet hold that office as well as an individual who has been elected to and taken office. (Regulation 18404.)

² 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 19997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

³ We do not address the issue of donations to governmental agencies in this discussion, but if private funds are solicited and donated to the agency to pay for the agency’s costs, candidates and officials attending the event may be receiving a gift (see Regulation 18944) and, if they solicit the donations to the agency, may have to file a “behested payment” report. (See Sections 82004.5 and 84224.)

authorized under the Act or by local law (for elected state officers see Section 85316 and Regulation 18531.62).⁴

May a donor make a payment directly to the campaign committee for a candidate elected to public office to pay for all or part of the candidate's inauguration event?

Yes. A payment to the candidate campaign committee to be used for an inauguration event is a contribution to the candidate. Accordingly, the payment must be reported as a contribution and is subject to any applicable contribution limit. In addition, any contribution made to a candidate for an inauguration event must be deposited into the appropriate campaign bank account.

A state candidate may not continue to fundraise after an election unless he or she has campaign debt. Accordingly, if the candidate was elected to state office, the candidate is prohibited from taking contributions into his or her campaign account for the recent election to pay for an inauguration event. (Section 85316 and Regulation 18531.61.) The candidate may only accept contributions for this purpose into his or her officeholder account established for the new office (Section 85316 and Regulation 18531.62) or into a campaign account established for re-election to the new office. Contributions to both of these accounts are subject to contribution limits. (See Sections 85316 (officeholder accounts) and 85301-85303 (campaign accounts).)

May a nonprofit 501(c)(4) inaugural host organization be set up to defray the costs of an inaugural event?

Yes, an inaugural host organization may be established to cover the costs of an inaugural event, where the candidate does not control the organization and the organization does not make contributions or expenditures for any candidate or ballot measure. Guidelines are described in FPPC advice letters. (*Willis* Advice Letter, No. I-11-130, *Sutton* Advice Letter, No. A-05-256, and *Bell* Advice Letter, No. A-94-376.)

May a committee not controlled by the candidate, such as a general purpose committee or political party, hold a fundraiser for the committee if that fundraiser also celebrates a candidate's election victory?⁵

Yes, and because the event is part of a fundraiser for the committee, any candidate or public official may receive two admissions to the event for his or her attendance, and the admission will have no reportable gift value as long as the admissions are provided by the committee holding the fundraiser.⁶ Additional tickets provided to the candidate, are gifts to the candidate

⁴ Elected state officers include individuals who hold, are elected to, or are appointed to fill a vacancy in, the following offices: Governor, Lieutenant Governor, Attorney General, Insurance Commissioner, Controller, Secretary of State, Treasurer, Superintendent of Public Instruction, Member of the Legislature, member elected to the Board of Administration of the Public Employees Retirement System, members of the Board of Equalization, and members elected to the Teachers' Retirement Board. (See Sections 82020, 82021, and 82024.)

⁵ The event must be a true fundraiser for the committee and not merely a "pass through" where the funds are merely being donated to the committee to pay for the costs of the inauguration event.

⁶ The rules herein apply equally to any public official who must file a Form 700.

and, if reportable on the candidate's Statement of Economic Interests, will be subject to the Act's current gift limit of \$470.⁷ (Regulation 18946.4(c).)

In addition, if the candidate solicits contributions to the committee in connection with the fundraiser, the contribution is not a contribution to the candidate (Regulation 18215(d)) nor is it a "behested payment" reportable by the candidate under Sections 82004.5 and 84224, but is a reportable contribution to the committee.

Assuming the payment is not a contribution to a candidate or committee as discussed above, may a donor make a payment directly to a vendor or to some other person to pay for all or part of a candidate's inauguration event?

Yes, but depending on the circumstances, other reporting rules may apply.

"Behested Payments."

A payment is made at the "behest" of a candidate whenever it is made "under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of" a candidate. (Regulation 18225.7.) A payment by a donor to a vendor or third party that is at the "behest" of an elected official is a reportable behested payment and must be reported by the candidate to his or her agency within 30 days following the date on which the payment or payments equal or exceed \$5,000 in the aggregate from the same source in the same calendar year. (Section 84224.)⁸

Because an inauguration event is related to a governmental purpose, a candidate may solicit donations to pay a vendor or a third party to pay expenses for his or her inauguration event as long as the candidate files a behested payment report (FPPC Form 803).

In addition, if an entity coordinates with the candidate or his or her agents on the details of the inauguration event, then the event is "at the behest" of the candidate and the entity's expenditures on the event must be reported as a behested payment by the candidate if they meet the criteria above.

Even if the candidate is required to file a behested payment report in connection with the event, he or she also may be receiving a gift in connection with the event, as described below.

⁷ The gift limit through December 31, 2018 is \$470. After that date, the gift limit is \$500.

⁸ An "elected officer" includes someone who has been elected to office but has not yet taken office; the behested payment reporting in Section 84224 therefore applies to recently elected candidates who have not yet taken office. (See Section 82020 and Footnote 4.)

Gifts.

General Rule

If the inaugurated candidate attends an inauguration event paid for by a private party, the value of any benefits the candidate receives is a reportable gift⁹ and the gift is subject to the Act's \$470 gift limit. (Section 89503 and Regulation 18940.2.) In addition, elected state officers and candidates for those offices are prohibited from receiving gifts from, or arranged by, a registered state lobbyist or lobbying firm in excess of \$10 in a calendar month. (Section 86203 and Regulation 18624.) The value is the pro rata cost of the event (i.e., total cost of the event divided by the number of persons who "RSVP" their attendance). (Regulation 18946.2.) See "Source of Gift" discussion below to determine who the source of a gift is.

Ticket/Invitation to the Public Official's Spouse or Children (Regulation 18943):

A gift of a ticket to the event provided to the candidate's family member is presumed to be a gift to the official, aggregated with all other gifts from that source, and reported in the following circumstances:

- The source is a lobbyist, lobbying firm, lobbyist employer or other person who is required to file lobbying reports under the Act.
- There is no established working or social relationship between the source and the family member.
- The source of the gift is a person who is or has been involved (in a governmental decision before the candidate within the past 12 months.
- The source has a contract or regularly engaged in business with the candidate's agency.

(Regulation 18943(c).)

Officials and candidates for office may not receive gifts from, or arranged by, a registered state lobbyist or lobbying firm in excess of \$10 in a calendar month.

Value of the Family Member's Gift

If admission provided to a family member is a gift to the candidate, and the admission is provided by tickets sold to the public, the value is the face value of the ticket. (Regulation 18946.1.) If the admission is to an invitation-only event, the value of the gift is the pro-rata share the cost of food, catering services, entertainment, and any item provided to the official. (Regulation 18946.2.)

⁹ This presumes that the source of the gift is one that the candidate is required to report on his or her Statement of Economic Interests and the aggregated gifts from the source during the applicable reporting period was \$50 or more. (See Sections 87207 and 87302.)

Source of Gift (Regulation 18945)

Regulation 18945 sets forth specific rules to determine who is the source of a gift under the Act. When donations are made through an entity, determining the source of a gift is important not only for reporting purposes on a candidate's Statement of Economic Interests, but also to avert the donor making a gift to the candidate that exceeds the Act's \$470 gift limit.

Generally, the source of a gift is anyone who makes the gift and who is not acting as an intermediary for another. (Regulation 18945(a).) A person is acting as an intermediary for the source of the gift when the gift to the official is provided under any of the following conditions:

- (1) the person receives a payment from a source and gives the payment to the official upon direction of the source;
- (2) the person receives a payment from a source after soliciting the payment with the understanding that the payment will be provided to an official; or
- (3) the person receives a payment from a source after the payment was solicited by the official or the official's agent to be given to the official. (Regulation 18945.)

Please note that applying the above rules is fact-specific and could vary depending on your situation. We encourage you to contact the FPPC if you have any questions regarding an inaugural event. You can reach us at 866-275-3772 or advice@fppc.ca.gov.