



FAIR POLITICAL PRACTICES COMMISSION

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April 23, 2009

Mr. Todd Frederick
Executive Assistant, President's Office
SLOCCCD/Cuesta College
P.O. Box 8106
San Luis Obispo, CA 93403

Re: Your Request for Advice
Our File No. I-09-020

Dear Mr. Frederick:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the "Act").¹ The President of Cuesta College has requested a policy on the acquisition of art. You have asked for our comments regarding the proposed art acceptance policy as it relates to the "gift" provisions of the Act. Because your request does not pertain to a specific set of facts or named officials, we are providing you with informal assistance.²

FACTS

You submitted the following draft art acceptance policy for Cuesta College:

"Art Acceptance Policy

"Cuesta College has been the recipient of art work of significant intrinsic and educational value; most have been acquired through donations. This document proposes

¹ 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 regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

guidelines for policy and management issues related to the development and sustainability of the art collections and individual pieces accepted by the college.

“The College may acquire art for the purpose of permanent display in and around the campuses. Artists or their representative wishing to donate art work or collections may direct their donations to the Cuesta College Foundation for consideration. All donations to Cuesta College must be made through the Foundation. Donations of works of art are a major source of enrichment for the college.

“The principal goals for acquiring and displaying works of art at Cuesta College are:

- To enrich the environment for students and visitors through the incorporation of the arts.
- To nurture, enhance, and encourage the community’s awareness and value of art.
- To enable the college to enhance its recognition as a center for the arts.
- To increase student access to works of art and to promote an understanding and awareness of the arts in the public environment.
- To promote diversity through a variety of styles, designs and media.”

“Criteria

“The College is appreciative of those who offer gifts of private or public art collections; however, acceptance of such gifts to be installed on Cuesta College property must be based on the following considerations:

- The appropriateness of the artwork for display or installation
- The public safety factor in relation to the display and/or installation
- The aesthetic quality of the work
- The cost of maintaining the work
- The condition of the work
- The cost of installation, maintenance, recognition, and/or moving the work.
- Appropriateness of the site
- Signage for artwork to be displayed shall be limited to the artist’s name, title, date of work, and where appropriate, a dedication. The name of the donor or lender may be part of the installation.

“Acquisition Procedure

“The procedure for the approval of the acquisition of art will be as follows:
If a contact is made with any area of the college regarding the possibility of a gift or commission for a work of art, or if any area of the college wishes to solicit a gift, or commission a work of art, the contact or the request must be referred to the college president and the Cuesta College Foundation.

“The college president will gather available information about the contact or the request and will commission an Art Acceptance Committee to review the request. A committee recommendation regarding the acceptability of the proposed work of art must be made within four weeks.

“The quality of the proposed work of art as determined by the consensus opinion of the expertise represented on the committee. Review by the Art Acceptance Committee is required for all acquisitions through donations. The following special site-specific considerations will be included in the review:

- Scale
- Theme
- Exposure
- Traffic flow
- Safety considerations
- Installation considerations
- Space restrictions.

“Upon review of the Art Acceptance Committee, recommendation will be made to the President’s Cabinet for review and recommendation.

“The college president will then collect the initial recommendations from the committees and prepare an initial recommendation for consideration by the Board of Trustees.

“If the Board of Trustees makes an initial decision to accept the proposed work of art, the Board will authorize the Foundation to enter into negotiations with the donor or artist for the acquisition of the art.

“If the Foundation is successful in negotiating an acceptable agreement for the acquisition of the work of art, it will communicate that information to the college president.

“If the Board of Trustees decides that it does not wish to acquire the proposed work of art, the Board will direct the college president to communicate the decision in a letter to the person making the contact or request.

Based on the proposed policy set forth above, you ask whether there is any requirement regarding gifts in the Act that you should include in your review, such as the Form 801 for certain gifts to agencies. You state that the acquisition of art will be negotiated by the College Foundation, which is not an auxiliary organization. You ask whether you are required to report as an agency in addition to what the Foundation already has in place. Our comments on the proposed art acceptance policy are necessarily limited to the requirements of the Political Reform Act and Commission regulations.

ANALYSIS

The Act prohibits certain public officials from accepting gifts from any single source in a calendar year with a total value of more than \$420.³ (Section 89503;

³ The gift limit is adjusted every two years to reflect changes in the Consumer Price Index. (Regulation 18940.2(a).)

Regulation 18940.2.) Under the Act, a local elected officer may not accept gifts from any single source totaling more than \$420 in a calendar year. (Section 89503.) In addition, an employee of a local government agency who is designated in the agency's conflict of interest code may not accept gifts from any single source totaling more than \$420 in a calendar year if the employee is required to report receiving income or gifts from that source on his or her Statement of Economic Interests. (Section 89503(c).) In addition, officials who are subject to these gift limits must report gifts totaling to \$50 or more in a calendar year from a single source on their Statements of Economic Interests. (Sections 87207 and 87302.)

Community colleges are within the Act's definition of a local government agency. (See, e.g., *Lepowsky* Advice Letter, No. A-04-096, *Washington* Advice Letter, No. A-02-034a; *Donato* Advice Letter, No. A-96-308, and *Willis* Advice Letter, No. I-95-270.) Thus, an elected community college trustee would be subject to the \$50 reporting requirement and \$420 per calendar year limit on gifts from any single source, and an employee who is designated in the college's conflict-of-interest code would be subject to the \$50 reporting requirement and \$420 per calendar year limit on gifts from a source he or she is required to report on his or her statement of economic interests. The Act also imposes fines for failure to comply with these provisions (Sections 83116, 89521, and 91004) as well as potential criminal sanctions (Section 91000).

A gift is defined in Section 82028 as follows:

“[A]ny payment⁴ 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 made in the regular course of business to members of the public without regard to official status” (Emphasis added.)

There are numerous exceptions to the Act's gifts limits, which are summarized in the enclosed gift fact sheet for local officials. The exceptions include gifts from family members, gifts which the recipient returns, reimburses the donor, or donates to a nonprofit organization or a government agency; certain gifts of hospitality; and informational material. (Section 82028; Regulation 18942 and 18942.1)

In addition, Regulation 18944.2 provides a limited exception whereby certain payments received by a state or local government agency, which are controlled by the agency and used for official agency business, will not be considered a reportable or limited gift to an individual public official, although the official receives a personal benefit from the payment.

For an official to receive a gift under the Act, the gift must provide the official with some *personal benefit*. If a third party payment strictly benefits the agency as a

⁴ The Act defines “payment” as “a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.” (Section 82044.)

whole and will result in no personal benefit to a public official, Regulation 18944.2 does not apply and Form 801 is not required. Many gifts to agencies do not involve a personal benefit to an official. In all likelihood, much of the art work accepted by Cuesta College pursuant to its Art Acceptance Policy would fall into this category. This would be the case for artwork displayed outdoors on college grounds, in campus centers, department halls and other common areas.⁵

However, it is possible that a gift or loan of artwork could confer a personal benefit on a particular official. For example, if artwork were accepted to be displayed in the office of the college president or the office of an employee designated in the college's conflict of interest code, the art would provide a personal benefit to that individual. The analysis of this type of situation depends on the specific facts. A donation of artwork to be hung in a particular official's office may, however, be required to be reported as a gift on the official's Statement of Economic Interests. Or the facts of the art donation may fit within the exception of Regulation 18944.2 for a gift made to an agency even though it also provides a personal benefit to an official. If so, the donation of art would be reported on Form 801.

In light of this, you may want to add some language to your art acceptance policy, stating that if the proposed donation of artwork will be hung in an elected officer's or designated employee's office, or otherwise provide a personal benefit to that individual, the individual and college staff shall consider whether the artwork needs to be reported as a gift on the individual's statement of economic interests (Form 700), or alternatively as a gift to the agency under Commission Regulation 18944.2 (Form 801).

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

Sincerely,

Scott Hallabrin
General Counsel

By: Hyla P. Wagner
Senior Counsel, Legal Division

Enclosure
HPW:jgl

⁵ In addition, we note that Regulation 18944.2 is not the statutory authority for a state or local agency to accept a gift. It simply provides that a gift that might otherwise be considered reportable or limited gift to an official will be considered a gift to an agency under certain circumstances. State agencies are authorized by law to accept gifts, subject to specified restrictions and procedures. (See Gov. Code Secs. 11005(b), 11005.1 and 16302, and State Admin. Manual Sec. 8634.) Many cities, counties and local agencies also have gift acceptance authority and policies.