

June 2, 2014

Laurence S. Wiener  
City Attorney  
Beverly Hills City Hall  
455 N. Rexford Drive, Room 230  
Beverly Hills, CA 90210

Re: Your Request for Advice  
**Our File No. A-14-099**

Dear Mr. Wiener:

This letter responds to your request for advice, on behalf of Beverly Hills Council member Dr. Julian Gold, regarding the provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### **QUESTION**

Are payments for invitations to a charitable gala sent by the nonprofit organization hosting the gala or payments made in response to the invitations reportable behested payments if an elected officer has been identified in the invitation’s title graphic as an “honoree” at the gala?

### **CONCLUSION**

No. The payments you have identified were not made at the elected officer’s behest and do not trigger behested payment reporting.

### **FACTS**

On May 7<sup>th</sup>, Beverly Hills City Council member Dr. Julian Gold, who is the co-chair of the anesthesiology department at Cedars-Sinai Medical Center, was one of two honorees at the

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<sup>1</sup> 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.

annual fundraising gala of the Tower Cancer Research Foundation (the “TCRF”). The TCRF is a 501(c)(3) charity that was founded in 1996 and provides grants for clinical trials, innovative research, caring patient support and community education to promote more effective treatments for cancer and blood disorders. The gala featured entertainment by Natalie Cole and Maxine Nightingale.

Dr. Gold is not employed by the TCRF, and he is not a member of the Board of the TCRF. Dr. Gold did not personally solicit any person or organization to make a donation to the TCRF or to buy a ticket to the gala and, at this time, does not know the identity of those donors who made a donation to the TCRF of more than \$5,000 in connection with the gala. In addition, for the medical group partnership which he co-manages and for the group’s wholly owned billing subsidiary LLC, both of whom bought tables, Dr. Gold recused himself from the decision making related to the purchase of those tables.

However, the invitation to the gala highlighted the fact that Dr. Gold was an honoree at the event. Along with the name of a second honoree, the invitation included a title graphic expressly indicating that the event was “Honoring Julian Gold, M.D. and Randall Katz.” As an honoree at the charitable event, Dr. Gold seeks guidance as to whether he must report as a behested payment any payment to the TCRF by a person or organization who paid at least \$5,000 to the TCRF to purchase tickets, tables, auctioned merchandise and/or advertisements in the program for the gala, or otherwise made charitable contributions at the event.

In an email on May 29, 2014, you indicated that Dr. Gold did not review, approve, or have any other input regarding the invitation. Moreover, while Dr. Gold knew he was an honoree and would have assumed that this fact would be highlighted in any invitations, Dr. Gold was not expressly told that the invitation would be mailed or would include his name.

### **ANALYSIS**

Section 82015 of the Act requires elected officers to report payments made at their behest that would not otherwise be reported as contributions and are not made principally for a personal purpose providing the following in subdivision (b):

“(2) A payment made at the behest of a candidate is a contribution to the candidate unless the criteria in either subparagraph (A) or (B) are satisfied:

“(A) Full and adequate consideration is received from the candidate.

“(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate’s candidacy for elective office:

“(i) A payment made principally for personal purposes, in which case it may be considered a gift under the provisions of Section 82028. Payments that are otherwise subject to the limits of Section 86203 are presumed to be principally for personal purposes.

“(ii) A payment made by a state, local, or federal governmental agency or by a nonprofit organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

“(iii) A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. ...”

Based upon the invitations by the TCRF you have described, there is no indication that the payments for the invitations were made for purposes of Dr. Gold’s candidacy (Section 82015(b)(2)(B)) and, in fact, it is presumed that payments by the TCRF, a nonprofit 501(c)(3) organization, are unrelated to his candidacy (Section 82015(b)(2)(B)(ii)). Accordingly, payments for the invitations do not constitute contributions to Dr. Gold. Nonetheless, the payments may be reportable pursuant to Section 82015(b)(2)(B)(iii) if the payments were made at Dr. Gold’s behest.

As provided in Regulation 18215.3(a) for purposes of behested payment reporting, a payment is “made at the behest of an ‘elected officer’ if 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 the officer. Based upon the facts provided, the invitation was created and mailed by the TCRF with no involvement by Dr. Gold. Moreover, there is no reason for a recipient of the invitation to believe that Dr. Gold was soliciting a donation merely because Dr. Gold had been identified as an honoree by the nonprofit organization hosting the gala. In these circumstances, we do not find that payments for the invitation or payments made as donations to the TCRF in response to the invitations are reportable behested payments for purposes of Section 82015(b)(2)(B)(iii).<sup>2</sup>

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<sup>2</sup> Regulation 18215.3(b) states that “[a] payment is not made at the behest of an elected officer ... and is not subject to behested payment reporting if the payment is made in response to a fundraising solicitation from a charitable organization requesting a payment where the solicitation does not feature an elected officer ....” While the *House* Advice Letter, No. I-13-017 states that “Regulation 18215.3 explains that if an elected official is ‘featured’ ... in a solicitation, then the responses to that solicitation are behested payments,” the letter also states that “[w]hether the response to a solicitation is a behested payment depends on the circumstances of the payment,” and cites the *Holmes Peak* Advice Letter, No. A-12-094, in which we found that a payment in response to a solicitation is a behested payment if a reasonable person would conclude, based on the surrounding circumstances, that the payment had a connection to the solicitation. Accordingly, we find that Regulation 18215.3(b) merely provides a safe harbor for solicitations that do not “feature” an elected officer, and find that the *House* letter still requires a

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

Sincerely,

Zackery P. Morazzini  
General Counsel

By: Brian G. Lau  
Counsel, Legal Division

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finding that the payments were made at the elected officer's behest before behested payment reporting applies, even if the official is "featured."