

March 11, 2015

Michele Beal Bagneris  
City Attorney  
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Pasadena, CA 91109-7215

Re: Your Request for Advice  
**Our File No. A-15-011**

Dear Ms. Bagneris:

This letter responds to your request for advice regarding the behested payment provisions of the Political Reform Act (the “Act”).<sup>1</sup> This letter is based on the facts presented in your request. 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.) Additionally, this letter should not be construed as assistance on any conduct that may have already taken place (see Regulation 18329(b)(8)(A).)

### **QUESTION**

Is Mayor Bill Bogaard required to report payments made to the City of Pasadena at his request where the payments will be used to defray the costs of the city’s 33<sup>rd</sup> Annual Black History Parade and Festival (the “Festival”)?

### **CONCLUSION**

Yes. The payments are “behested payments” that Mayor Bogaard must report on the Commission’s “Behested Payment Report.”

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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.

## FACTS

City staff has asked Mayor Bogaard to solicit funds from various persons and community organizations to sponsor the Festival. Mayor Bogaard is elected at large and a member of the City Council. Festival sponsors can participate at any level and the Mayor's request encourages sponsorship starting at \$1,000 to \$7,000 and above. Donations would be made payable to the city. The city's Department of Human Services, under the direction of the City Manager, will direct how the payments will be used in carrying out the Festival events. Mayor Bogaard is not in a position to supervise, control or direct the staff members, nor the manner in which the solicited funds will be used. Mayor Bogaard will not control the funds raised.

## ANALYSIS

The Act states that, generally, a "contribution" includes a payment made at the behest of a candidate. (Section 82015(b).) The term "candidate" includes those who hold an elected office. (Section 82007.) 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" the elected officer. (Section 82015; Regulation 18215.3(a).) The term "payment" includes an expenditure of money (see Section 82044), and an expenditure made at the behest of a candidate includes "expenditures made by a person other than the candidate or committee, to fund a communication relating to" a candidate who is clearly identified. (Regulation 18225.7(b).)

Section 82015(b)(2), sets forth several exceptions to the general rule that a payment made at the behest of a candidate is a contribution. Subdivision (b)(2)(B) applies to the facts here. It provides that a behested payment is not a contribution if:

"(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:

...

"(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 official 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. . . ."

Section 82015(b)(2)(B)(iii) provides that even if a payment made "at the behest" of an

elected official is not a contribution to that official, the official must file a report detailing the payment if the payment is principally for a legislative, governmental or charitable purpose. The purpose of the “behested payment” provision in Section 82015 is to capture reporting for payments that are not direct contributions to elected officials, but that the public would want to see in periodic reports. That is, the purpose is to provide disclosure of payments when there might be a potential for influence over a public official.

You indicate that the payments made to defray the costs of the Festival will be used for the general benefit of the city, which has put on the Festival for 32 years. The payments will not be used to assist or benefit Mayor Bogaard. Decisions as to how the payments will be applied toward Festival costs will be made by staff over whom Mayor Bogaard has no supervisory authority. We find that these distinctions have no bearing on the question of whether the payments are reportable behested payments. As stated above, the purpose of the “behested payment” provisions is to capture reporting for payments that are not direct contributions to elected officials, but that the public would want to see in periodic reports and to provide disclosure of payments when there *might be a potential* for influence over a public official. This is why officials must report payments made to a nonprofit organization at the official’s request. The official does not control how the nonprofit will use the payments nor are the payments used to assist or benefit the official. The potential for influence is no different whether the elected official requests the payments for a nonprofit organization or the official’s agency. Accordingly, any payments made in response to Mayor Bogaard’s request are behested payments that he must report.

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

Sincerely,

John W. Wallace  
Assistant General Counsel

By: Valentina Joyce  
Counsel, Legal Division

VJ:jgl