



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
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The following advice letters are SUPERSEDED by *Olson*, Advice Letter No. I-15-065: *Watson*, Advice Letter No. I-94-219, *Paiva*, Advice Letter No. A-06-014, *Pomer*, Advice Letter No. A-09-258 and *Olson* Advice Letter I-10-092 to the extent that they conflict with amendments to Section 82015 and Regulation 18215 and the conclusions in this letter that lobbyists are prohibited from hosting in-home fundraisers.

June 4, 2015

Lance H. Olson  
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Sacramento, CA 95814-4602

Re: Your Request for Informal Assistance  
**Our File No. I-15-065**

Dear Mr. Olson:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).<sup>1</sup>

Our advice is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice.<sup>2</sup> Additionally, we base our advice solely on the provisions of the Act and do not address the applicability, if any, of other laws.

Because your letter seeks general information, we are treating your request as one for informal assistance.<sup>3</sup>

### FACTS

You seek written advice on behalf of your client, The Gualco Group, Inc., (“Gualco”) a lobbying firm registered to lobby the state Legislature. Gualco employs lobbyists and has lobbyist employers as clients. Jackson Gualco is a registered lobbyist and owner of Gualco. Gualco rents an office in Sacramento.

In light of recent legislative and regulatory changes, you seek advice on Section 82015(f) and Regulation 18215 regarding the \$500 home or office exception to the definition of “contribution.” While your question is hypothetical in nature, it essentially concerns the relationship among: (1) Gualco, a lobbying firm owned by a registered lobbyist; (2) officials that Gualco’s

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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.

<sup>2</sup> *In re Oglesby* (1975) 1 FPPC Ops. 71.

<sup>3</sup> Informal assistance does not provide the requester with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

lobbyist is registered to influence; and (3) Gualco's clients, lobbyist employers, who are paying Gualco to influence the specific officials in question.

### QUESTIONS & CONCLUSIONS

1. May Gualco, a lobbying firm, host a campaign meeting that is not a fundraising event in the firm's office for the benefit of an officeholder or candidate the lobbying firm is registered to lobby if the total cost of the meeting is \$500 or less?

Yes. Nothing in the Act prevents Gualco from hosting a campaign meeting that is not a fundraising event in its office for the benefit of an officeholder or candidate for an office the lobbying firm is registered to lobby if the total cost of the meeting is \$500 or less.

2. If Gualco may host a campaign meeting in the lobbying firm's office for an officeholder or candidate the firm is registered to lobby, must the fair market value of the office be considered in determining the cost of the meeting?

No. The home or office exception in Section 82015(f)(1) applies to campaign meetings if the total cost of the campaign meeting is \$500 or less, exclusive of the value of the office as a venue.

3. May Gualco rent the firm's offices for a fundraising event to an officeholder or candidate the lobbying firm is registered to lobby, if the total cost of the fundraising event (including fair market rental value of the office space) is \$500 or less?

No. Gualco, a lobbying firm owned by a registered lobbyist, may not rent its firm's offices as a fundraising venue to an officeholder or candidate the firm is registered to lobby.

4. May Gualco rent the lobbying firm's offices to a one of its clients (a lobbyist employer) to hold a fundraiser on behalf of an official or candidate the lobbying firm is registered to lobby?

No. Gualco, a lobbying firm owned by a registered lobbyist, may not rent its firm's offices as a fundraising venue to one of its clients (a lobbyist employer) to benefit an officeholder or candidate the firm is registered to lobby.

### ANALYSIS

#### Contributions:

The term "contribution" is defined in Section 82015 as a "payment, . . . except to the extent that full and adequate consideration is received, unless it is clear from the surrounding circumstances that it is not made for political purposes."

Section 82015(f) provides an exception to the term "contribution" for payments made by the occupant of a home or office for costs related to any meeting or fundraising event in the occupant's home or office if the costs for the meeting or fundraising event are \$500 or less.

The Commission's longstanding advice has been that the total cost of such an event *cannot* exceed \$500 and still come within the exception. This includes goods or services provided by the candidate or any other person attending the event. If the cost of the event exceeds \$500, all payments are counted as contributions.<sup>4</sup>

In 2014, two bills, SB 1441 and AB 1673, amended Section 82015, adding new language in subdivision (f). The Legislature introduced these bills in response to various allegations against lawmakers and the widely publicized FPPC enforcement case involving lobbyist Kevin Sloat. The Governor signed into law a package of ethics bills including SB 1441 and AB 1673. The changes took effect January 1, 2015.

These statutory changes provide that:

“(f)(1) Except as provided in paragraph (2) or (3), ‘contribution’ does not include a payment made by an occupant of a home or office for costs related to any meeting or fundraising event held in the occupant’s home or office if the costs for the meeting or fundraising event are five hundred (\$500) or less.

“(2) ‘Contribution’ includes a payment made by a lobbyist or a cohabitant of a lobbyist for costs related to a fundraising event held at the home of the lobbyist, including the value of the use of the home as a fundraising event venue. A payment described in this paragraph shall be attributable to the lobbyist for purposes of Section 85702.

“(3) ‘Contribution’ includes a payment made by a lobbying firm for costs related to a fundraising event held at the office of the lobbying firm, including the value of the use of the office as a fundraising event venue.”

The exception in Section 82015(f) promotes grassroots volunteer campaign activity. It permits campaign volunteers to hold low-cost neighborhood coffees, meet and greets, and fundraisers in their home or office for candidates under \$500 without the event counting as a reportable contribution to the candidate. Prior to this legislation, the home or office exception under Section 82015(f), had provided for a \$500 exception for an in-home or in-office meeting or fundraising event that did not specifically exclude lobbyists. By including the value of the home or office venue as an in-kind contribution, the legislative authors intended to create “a situation where it is virtually impossible to have a fundraiser in a lobbyist’s home or office without having an illegal contribution.”<sup>5</sup>

With the passage of SB1441 and AB1673, lobbyists and lobbying firms may no longer take advantage of the \$500 home or office fundraiser exception when holding a fundraising event, as the

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<sup>4</sup> Paiva Advice Letter, No. A-06-014; Thompson Advice Letter, No. A-86-121; Watson Advice Letter, No. I-94-219; Raper Advice Letter, No. I-97-282.

<sup>5</sup> SB 1441 analysis by the Senate Committee on Elections and Constitutional Amendments 4/3/14.

payment for the value of the fundraising venue is a contribution attributed to the lobbyist or lobbying firm.<sup>6</sup>

The bills' authors said the legislation was intended "to tighten state law" so that it "bans fundraisers from being held at the home of a lobbyist or at a lobbying firm."<sup>7</sup> The authors stated in public comments, newspaper interviews, and in bill analyses that the legislative changes were intended to prohibit in-home and in-office fundraisers by lobbyists and lobbying firms.

Consistent with the above statutory changes, the Commission approved in February 2015 amendments to Regulation 18215 that state the term "contribution" includes:

"(b)(4) Payments from Lobbyists for Fundraising Costs. A payment made by a lobbyist or a cohabitant of a lobbyist for costs related to a fundraising event held at the home of the lobbyist, including the value of the use of the home as a fundraising event venue. This payment cannot be reimbursed by any person and is attributable to the lobbyist for purposes of the prohibition against a lobbyist making a contribution to specified candidates and elected officers under Section 85702."

"(b)(5) Payments From Lobbying Firms for Fundraising Costs. A payment made by a lobbying firm for costs related to a fundraising event held at the office of the lobbying firm, including the value of the use of the office as a fundraising event venue."

Lobbyist Prohibitions:

Section 85702 provides the following:

"An elected state officer or candidate for elected state office may not accept a contribution from a lobbyist, and a lobbyist may not make a contribution to an elected state officer or candidate for elected state office, if that lobbyist is registered to lobby the governmental agency for which the candidate is seeking election or the governmental agency of the elected state officer."

Regulation 18572 provides that a lobbyist makes a contribution prohibited by Section 85702 when the contribution is made by a business entity owned in whole or part by a lobbyist and the lobbyist participates in the decision to make the contribution.<sup>8</sup> In addition, Regulation 18572 provides that a lobbyist makes a contribution prohibited by Section 85702 when he or she, among other things, "delivers or transmits" a contribution to the prohibited candidate that is made from the lobbyist's personal funds or assets.<sup>9</sup>

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<sup>6</sup> Section 82015(f)(2)-(f)(3).

<sup>7</sup> SB 1441 analysis by the Senate Committee on Elections and Constitutional Amendments.

<sup>8</sup> Regulation 18572(a)(2).

<sup>9</sup> Regulation 18752(a)(1) states that, "A contribution will be deemed to be made from a lobbyist's personal funds or assets when the contribution is made from assets which are the personal property of the lobbyist" unless the contribution is attributed to another person under Regulation 18533.

*In-Office Meetings:*

Legislative changes with the passage of SB1441 and AB1673, did not affect the ability of lobbyists and lobbying firms to use the home/office exception under Section 82015(f)(1) when holding *meetings* with a state official or candidate costing \$500 or less. Lobbyists and lobbying firms may continue to use the home or office exception to the definition of contribution under Section 82015 when they hold meetings with a state official or candidate, if the total cost of the event is \$500 or less, not including the value of the meeting venue.

However, consistent with the Commission's long-standing advice, the total cost of an in-office meeting *cannot* exceed \$500 and still come within the exception under Section 82015(f)(1). If the total cost of the event exceeds \$500, then all the expenditures will count and result in an in-kind contribution from the lobbyist or lobbying firm to an official.

*In-Office Fundraisers Hosted by the Lobbying Firm:*

The specific prohibition in Section 85702 applies only to lobbyists. Because Gualco's owner is a registered lobbyist, the contribution ban in Section 85702 applies to him.

Accordingly, a fundraiser hosted by Gualco would constitute an in-kind contribution to a state official or candidate on whose behalf the fundraiser is held. Section 85702 and Regulation 18572(a)(2) prohibit Gualco from making a contribution to a state official or candidate because it is owned by a registered lobbyist.

You ask specifically whether Gualco may "rent" its office to an officeholder or candidate the lobbying firm is registered to lobby if the total cost of the fundraising event, including fair market rental value of the office space, is \$500 or less.

Section 82015(f)(1) no longer exempts from the definition of contribution home and office *fundraising events* hosted by lobbyists and lobbying firms costing less than \$500, so all payments related to these fundraising events regardless of cost are in-kind contributions to candidates or officials.

Implicit in your question is whether payment of "rent" would provide "full and adequate consideration" to negate what would otherwise be a prohibited in-kind contribution. A "contribution" as defined in Section 82015 as a "payment, . . . except to the extent that *full and adequate consideration* is received . . ." (Emphasis added.)

Regulation 18215(b)(4) states that a "payment made by a lobbyist or cohabitant of a lobbyist for costs related to a fundraising event held at the home of the lobbyist, including the value of the use of the home" as a fundraising venue "cannot be reimbursed by any person and is attributable to the lobbyist" for purposes of the prohibition in Section 85702. It is clear that lobbyists may not use

their home for a fundraiser and receive reimbursement of costs to avoid the lobbyist contribution ban.<sup>10</sup>

Similarly, Regulation 18215(b)(5) states that a contribution includes “costs related to a fundraising event held at the office of the lobbying firm” including the “value of the use of the office” as a fundraising venue.

In the situation you describe, it is not likely that any “rent” or “reimbursement” a lobbyist-owned firm would receive from an official would provide “full and adequate” compensation for the “value of the use of the office” as a fundraising venue. There are value-added benefits included in such arrangements like the provision of staff time and attention, organization, facilitation, execution, publicity, and other resources readily available and easily accessed by a candidate or official when the premises for a fundraising venue are provided by lobbyist assets. These intangible benefits are difficult to quantify, much less tease out in these types of transactions.

Moreover, it is clear that this situation creates an impermissible imbalance favoring the lobbyist. The lobbying firm receiving rent from an official benefits from more than just the fair-market rental value of the office venue, but also receives the substantial advantages of access, association, and influence the venue provides the lobbyist.

A comprehensive review of the Act’s provisions dealing with lobbyist prohibitions, in context with recent amendments to related statutes and regulations, leads us to conclude that a lobbyist may not avoid the contribution prohibition under Section 85702 by renting or receiving reimbursement for use of his or her lobbying firm’s office from a candidate or official the lobbyist is registered to lobby.

In construing a statute, the “fundamental task is to ascertain the Legislature’s intent so as to effectuate the purpose of the statute.” (*Smith v. Superior Court* (2006) 39 Cal.4th 77, 83.)

The Legislature intended statutory changes to Section 82015 to prevent lobbyists and lobbying firms from hosting in-home and in-office fundraisers for specified candidates and officials under Section 85702. To conclude otherwise would circumvent the legislative changes to Section 82015, conforming amendments to Regulation 18215, and thwart the Legislative authors’ stated intent to ban lobbyists and lobbying firms from hosting in-home and in-office fundraisers for officials they lobby.

This approach is consistent with the Commission’s duty to implement the intent and not just the literal language of a statute. The Commission has the authority to effectuate the purposes of the Act through regulations and to avoid a wooden realism that would subvert those purposes. Section 81003 states that the Commission is mandated to liberally construe the provisions of the Act to accomplish its purposes.

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<sup>10</sup> The following advice letters are superseded – *Watson*, I-94-219, *Paiva*, A-06-014, and *Pomer*, A-09-258—to the extent that they conflict with amendments to Section 82015 and Regulation 18215 and the conclusions in this letter that lobbyists are prohibited from hosting in-home fundraisers.

Accordingly, a lobbyist-owned firm may not host an in-office fundraising event for an official it is registered to lobby. Moreover, a lobbyist-owned firm hosting an in-office fundraising event for an official it is registered to lobby may not receive “rent,” be reimbursed by, or receive prepayment of the venue cost from certain candidates or officials in order to escape the prohibition under Section 85702.<sup>11</sup>

#### *In-Office Fundraisers Hosted by the Lobbying Firm’s Clients*

You also ask if a lobbying firm may rent the lobbying firm’s offices to one of its clients (a lobbyist employer) to hold a fundraiser for an official or candidate the lobbying firm is registered to lobby.

Section 85702 places severe restrictions on the lobbyist’s involvement in a fundraising event for a candidate the lobbyist is registered to lobby and to whom the lobbyist cannot otherwise contribute. We find this is the case even if one of its lobbyist employer clients hosts the fundraiser by “renting” the lobbying firm’s offices.

Regulation 18572 provides that a lobbyist makes a contribution prohibited by Section 85702 when the contribution is made by a business entity owned in whole or part by a lobbyist and the lobbyist participates in the decision to make the contribution.<sup>12</sup> In addition, Regulation 18752 provides that a lobbyist makes a contribution prohibited by Section 85702 when he or she, among other things, “delivers or transmits” a contribution to the prohibited candidate that is made from the lobbyist’s personal funds or assets.<sup>13</sup> Were a client to hold a fundraiser at a lobbyist-owned firm’s office, it is virtually inconceivable that *no payment* related to the fundraising event would be made by the lobbying firm, as discussed above.

Moreover, recent statutory and regulatory amendments were intended to ban lobbyists and lobbying firms from holding both in-home and in-office fundraisers for specified candidates and officials under Section 85702.

We cannot ignore the clear policy of the Act and the stated legislative intent behind these changes. A lobbying firm “[can] not be permitted to do indirectly what it cannot by law accomplish directly.”<sup>14</sup> The Legislature did not intend such a loophole or exception.

Therefore, we conclude that a lobbyist-owned firm may not avoid the contribution prohibition under Section 85702 and the recent legislative changes to Section 82015(f) by “renting” its office as a fundraising venue to one of its lobbyist employer clients to benefit a candidate or official it is registered to lobby.

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<sup>11</sup> To the extent that the *Olson* Advice Letter I-10-092 conflict with amendments to Section 82015 and Regulation 18215, and the conclusions of this letter, they are also superseded.

<sup>12</sup> Regulation 18572(a)(2).

<sup>13</sup> Regulation 18752(a)(1).

<sup>14</sup> *United States v. Condel, Inc.* (1988), 91 B.R. 79, 82.

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

Sincerely,

Hyla P. Wagner  
General Counsel

/s/

By: Emelyn Rodriguez  
Counsel, Legal Division

ER:jgl