



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 24, 2015

Samuel Schuchat
Executive Officer
California State Coastal Conservancy
330 Broadway, 13th Floor
Oakland, California 91612-2512

Re: Your Request for Advice
Our File No. A-15-070

Dear Mr. Schuchat:

This letter responds to your request for advice regarding the behested payment provisions of the Political Reform Act (the “Act”).¹

QUESTION

Does an elected official have a reporting obligation under the “behested payment” rule when he or she provides a letter to the State Coastal Conservancy expressing support for a grant of funds to be made by the Conservancy to nonprofit 501(c)(3) organizations to carry out conservation activities in the official’s district?

CONCLUSION

An elected official has a “behested payment” reporting obligation when he or she provides a letter to the State Coastal Conservancy expressing support for a grant of funds to be made by the Conservancy to a nonprofit 501(c)(3) organization to carry out a specific project.

FACTS

The State Coastal Conservancy (the “SCC”) is a non-regulatory state agency created in 1976 to complement the California Coastal Commission and the San Francisco Bay Conservation and Development Commission. According to the SCC website:

“The California Coastal Conservancy, established in 1976, is a state agency that uses entrepreneurial techniques to purchase, protect, restore, and

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.

enhance coastal resources, and to provide access to the shore. We work in partnership with local governments, other public agencies, nonprofit organizations, and private landowners.

“To date, the Conservancy has undertaken more than 1,800 projects along the 1,100 mile California coastline and around San Francisco Bay. These projects often accomplish more than one Conservancy goal. Through such projects, the Conservancy:

- Protects and improves the quality of coastal wetlands, streams, watersheds, and near-shore ocean waters;
- Helps people get to coast and bay shores by building trails and stairways and by acquiring land and easements. The Conservancy also assists in the creation of low-cost accommodations along the coast, including campgrounds and hostels;
- Works with local communities to revitalize urban waterfronts;
- Helps to solve complex land-use problems;
- Purchases and holds environmentally valuable coastal and bay lands;
- Protects agricultural lands and supports coastal agriculture;
- Accepts donations and dedications of land and easements for public access, wildlife habitat, agriculture, and open space.

“The Coastal Conservancy has a staff of about 75 and a current annual budget of \$50 million. Since 1976, the Conservancy has put more than \$1.5 billion to work for the coast and the people of California. The Conservancy has been funded primarily by state general obligation bonds approved by California voters.

“The Legislature created the Coastal Conservancy as a unique entity with flexible powers to serve as an intermediary among government, citizens, and the private sector in recognition that creative approaches would be needed to preserve California’s coast and San Francisco Bay lands for future generations. The Coastal Conservancy’s non-regulatory, problem-solving approach complements the work of the California Coastal Commission, a distinct agency that regulates land use along the coast and issues development permits. The Coastal Conservancy also coordinates its work with the San Francisco Bay Conservation and Development Commission, an agency created to protect and enhance San Francisco Bay and encourage the responsible use of its resources.”

You stated that a key component of the SCC’s work is to grant funds to public entities and to U.S. Internal Revenue Code section 501(c)(3) nonprofit organizations to aid the grant recipients in carrying out projects that further the SCC goals. Grants to nonprofit organizations can be for purposes of acquiring interests in land for conservation, restoration and public access; or restoring habitat and constructing public access improvements. For example, the SCC has made grants to

nonprofit organizations for restoration of wetlands, removal of culverts and other barriers to fish movement in rivers, and construction of public trails and interpretive signs.

The SCC awards grants following a public hearing during which it considers the details of the proposed project and the consistency of the project with the SCC's purposes. During the years 2011 to 2013, the SCC awarded approximately 270 grants, of which 142 were to nonprofit organizations. The total amount of grant funds awarded in these years to non-profit organizations was almost \$62 million. Of that \$62 million, approximately \$38 million was for land acquisition and \$24 million was for planning and construction. For acquisitions, SCC grants are paid in a lump sum. For all other projects, SCC grants are paid in arrears through successive progress payments. This means most non-acquisition grants are paid out in multiple payments over time, usually in amounts greater than \$5,000.

Given the amount of funds the SCC is responsible for disbursing and the number of potential projects needing funds, the SCC has developed guidance to aid its decision-making. The SCC has adopted a strategic plan as well as project selection criteria, seven of which are mandatory. One of the mandatory project selection criteria is that a project proposed for grant funding must have public support. The SCC considers letters of support from elected officials to be an important indicator of public support for a project. Elected officials are in a position to know whether their constituents support a particular project, and are less likely to provide a support letter for a controversial project. Thus, the SCC typically asks grant applicants to contact their local and state elected representatives to seek letters of support for their projects. The letter of support from an elected representative provides the SCC with evidence that there is public support for the project; this is just one of many criteria that the SCC considers in determining whether to award a grant for the project.

ANALYSIS

The Act states that when a payment is made at the behest of an elected official for a legislative, governmental, or charitable purpose and the payment is not otherwise a gift or contribution, the official must report the payment if, when combined with similar payments by the same source during a calendar year, the total of the payments is \$5,000 or more. (Section 82015(b)(2)(B)(iii).) "Made at the behest of" means 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, Public Utilities Commission member, or his or her agent. (Regulation 18215.3(a).)

You asked whether an elected official has a "behested payment" reporting obligation when he or she provides a letter to the State Coastal Conservancy expressing support for a grant of funds from the Conservancy to a nonprofit organization (501(c)(3)) to carry out a specific project. The payment would appear to meet all the requirements of the behested payment definition. In a similar situation, we advised that behesting grants for nonprofits was subject to the reporting rule in Section 82015. (*Romero* Advice Letter, No. I-09-044.)

As you note, however, Regulation 18215.3(c) exempts certain payments from behested payment reporting. Regulation 18215(c) provides:

“A payment is not ‘made at the behest’ of an elected officer under Section 82015(b)(2)(B)(iii) or PUC member under Section 82015(b)(3) and is not subject to reporting if the elected officer or PUC member makes a request for a payment 1) from a local, state, or federal governmental agency and 2) that payment will be used in the regular course of official agency business of the elected officer or PUC member’s agency.

In the *Harrison* Advice Letter, No. I-13-106, we concluded that the exception applied to a behested payment from one government agency to another. We focused on the specific facts surrounding the grant behest.

“The issue we must address, then, is whether, for purposes of Regulation 18215.3(c), such a payment is being used in the regular course of official agency business of the Legislature.

“Besides working on legislation, it is well-known that legislators have traditionally been expected to assist local agencies within their legislative districts in obtaining government funding for local government agency projects. Thus, when a legislator acts to achieve this purpose, he or she is acting in the regular course of legislative business and bringing benefits, through the affected local government agency, to the state citizens whom he or she represents as constituents. As such, we view the payments made in this context as being used in the regular course of business of not only the government agencies that make or receive the payments, but also in the regular course of legislative business. Accordingly, we conclude that these payments fall under the exception in Regulation 18215.3(c) and are therefore not behested payments subject to reporting under Section 82015(b)(2)(B)(iii).

“Please note, however, that not all payments an elected officer ‘behests’ from a government agency fall under the exception in Regulation 18215.3(c). *Payments from one government agency to another government agency normally benefit the public at large and, therefore, the government agency of the elected officer who ‘behests’ the payment. But a payment from a government agency to a private individual or entity, such as through a government grant or contract, will not normally fall into this category.* This is so because, while there may be a general benefit to the public in this situation, there is also a benefit to a specific, identified private person. We believe the Legislature, in adding the behested payment reporting requirement to the Act, intended to capture situations in which the official is making the behest to specifically benefit private individuals or entities.”

Under your facts, the behest is made for the benefit of private nonprofit entities, not public entities. Consequently, we conclude that the payments will not be used in the regular course of official agency business of the elected officer and therefore the payments would be subject to behested payment reporting.

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

Sincerely,

Hyla P. Wagner
General Counsel

/s/jgl

By: John W. Wallace
Assistant General Counsel

JWW:jgl