



FAIR POLITICAL PRACTICES COMMISSION

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November 9, 2004

Gregory P. Priamos, City Attorney
City of Riverside
Office of the City Attorney
3900 Main Street
Riverside, CA 92522

**Re: Your Request for Advice
Our File No. A-04-191**

Dear Mr. Priamos:

This letter is in response to your request on behalf Councilmember Dom Betro for advice regarding the gift and campaign provisions of the Political Reform Act (the "Act").¹ Please note that the Commission does not act as the finder of fact when it renders advice. In addition, nothing in this letter should be construed to evaluate any conduct which has already taken place. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

QUESTIONS

1. Will donations to Family Service Association, a 501(c)(3) nonprofit organization, be considered gifts when made at the behest of Mr. Betro, who serves as a city council member as well as president and CEO of the charity?
2. Will the donations be considered contributions to the councilmember?

CONCLUSIONS

1. Donations solicited for the nonprofit 501(c)(3) organization, Family Service Association, at the behest of Mr. Betro will not constitute gifts to him. Under certain circumstances the Commission will pierce through a nonprofit and treat a

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

donation as a payment to the public official who serves on the board. However, provided the public official does not solely control the organization and the donation will not affect the income the public official receives from the charity, the Commission will not pierce the nonprofit organization.

2. Under these limited circumstances, donations to FSA will not constitute contributions to Mr. Betro, provided his status as a candidate is not a factor when the donations to FSA are made.

FACTS

Dom Betro is a newly elected member of the Riverside City Council. Mr. Betro has served for nineteen years as president and CEO of the Family Service Association, a nonprofit, tax-exempt Internal Revenue Service 501(c)(3) corporation which provides a wide variety of human services including child care, counseling, senior services and community/youth centers. The organization is supported by a combination of private donations and public funding (primarily from the state). Donations are segregated from public funds, and only the latter are used to pay administrative expenses, including Mr. Betro's salary.

As president and CEO, Mr. Betro's responsibilities include fundraising on behalf of the Family Service Association although his fund-raising activities are limited to making personal solicitations to groups of potential donors or to individual donors, and generally supervising the internal development staff who conduct most of the fund-raising activities. His activities will be further limited when the organization completes the hiring process for a fund-raising consultant. The outside consultant will be responsible for managing the nonprofit's fund-raising activities.

In any and all solicitations made by Councilmember Betro for the association, no references are made to his official position or to pending city council actions or other city business. The donations are all solicited with reference only to the association and its activities.

ANALYSIS

You have asked whether donations to the Family Service Association ("FSA") which employs Councilmember Betro as president and CEO are considered gifts or reportable as campaign contributions under the Act.

Gifts

The Act imposes certain obligations on public officials with respect to receipt of gifts. The Act generally limits the acceptance of gifts by public officials to \$340 in a calendar year from a single source. (Section 89503; regulation 18940.2.) The Act also prohibits the making of gifts in excess of the gift limit. (Section 89521.)

Section 82028(a) defines a "gift" as:

"...any payment 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. Any person, other than a defendant in a criminal action, who claims that a payment is not a gift by reason of receipt of consideration has the burden of proving that the consideration received is of equal or greater value."

Generally, the Act does not treat persons working for or serving on the boards of nonprofit entities as recipients of donations received by the entity. For example, in *In re Nejedly* (1976) 2 FPPC Ops. 46, the Commission was asked whether gifts to the Contra Costa Youth Association, and other nonprofit entities, would be treated as gifts to a Senator if the Senator requested the donations and was the president of the organization. The Commission determined:

"The reporting requirement and [lobbyist gift] prohibition...apply only to gifts that are made to the legislator and clearly are not applicable to the instant situation.

"As president of the Contra Costa Youth Association, Senator Nejedly makes appeals for money, goods and services to be utilized by the Association. These necessities are given to the Association, not Senator Nejedly. Accordingly, the donations generated by the Senator's solicitations are gifts to the Association, not to the Senator."

However, the Commission cautioned that the result would be different if the organization merely acted as an agent for the Senator. In the *O'Shea* Advice Letter No. I-90-593, we concluded that gifts to a civic league would not be treated as gifts to the members of the board of directors who were public officials. Nonetheless, "[c]are should be taken to assure that donations to the agency are not deemed to be donations to individual board members. This could occur, for example, if donations were used to pay travel expenses for board members. However, so long as donations are not deemed to be donations to members, the donors do not become economic interests of those board members."

Similarly, in the *Mello* Advice Letter No. A-91-150, we advised that "...where persons donate money to [a family] foundation at [Senator Mello's] behest, the donation will not be gifts to [the Senator] provided they are given to the foundation for its use."

Contributions

Section 82015(a) defines a "contribution" as follows:

"'Contribution' means a payment, a forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make 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(b)(1) provides, in relevant part, that a payment made at the behest of a candidate is considered a contribution unless it is clear from the surrounding circumstances that the payment was made for purposes unrelated to an elected officer's candidacy for elective office. Certain payments are presumed to be for purposes unrelated to an elected officer's candidacy for elective office, including those made principally for a charitable purpose. (Section 82015(b)(2)(B)(iii).) These payments are reportable if they are for \$5,000 or more.

Under Mr. Betro's limited circumstances, we believe that donations made to FSA are for purposes unrelated to his candidacy. We base this conclusion on the following facts:

- Mr. Betro was employed by FSA for 19 years before he was elected to the city council.²
- Although FSA receives money from private donations and public funding (primarily from the state), all donations are segregated from public funds.
- Mr. Betro's salary is paid only out of public funds.
- Mr. Betro's fundraising efforts are directly connected with the fulfillment of his employment obligations.
- No references to the councilmember's official position will be made.
- No references to any pending elections or status as a candidate will be made.
- No solicitation of contributions for the councilmember's campaign will be made.

Provided his status as a candidate is not a factor as described above when donations to FSA are made, any donations to FSA will not be considered contributions

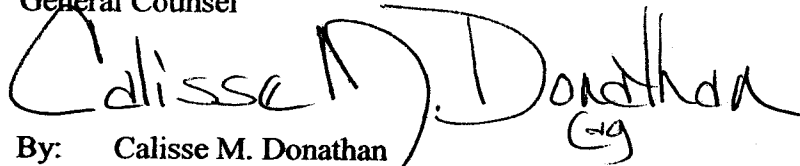
² Please note that under some circumstances, a nonprofit association (such as FSA) in which a candidate, his or her agent, or any committee the candidate controls, exercises significant influence over, or acts jointly with in connection with the making of expenditures, will be considered a controlled committee if either of the following applies: "(A) The organization receives or expends funds for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or the qualification or passage of any measure. [or] (B) The organization makes *contributions* to candidates or their controlled committees." (Regulation 18217(a)(2)(A-B).) (Emphasis added.) Neither of these criteria appear to fit FSA.

under the Act. This is a factual determination. Therefore, Mr. Betro should ensure his status as a candidate is not a factor when making the solicitations.³

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

Sincerely,

Luisa Menchaca
General Counsel


By: Calisse M. Donathan
Intern, Legal Division

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³ Note that this conclusion is based on the representation that the payments made at the council member's behest will be wholly unrelated to his status as an officeholder. However, even if the payments are made in connection with the candidate's status as an officeholder, the payments will only be reportable at a \$5,000 threshold, so long as the payments are principally made for charitable purposes. (Regulation 82015(b)(2)(B)(iii).)