



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 21, 2021

Paul McNamara
Mayor
City of Escondido
201 N Broadway
Escondido, CA 92025

Re: Your Request for Advice
Our File No. I-21-061

Dear Mr. McNamara:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the “Act”).¹ Because your question is general in nature, we are treating your inquiry as a request for informal assistance.² Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

If you, an elected official, requested others make payments directly to a videographer for the production of videos for your YouTube channel would those payments be considered a contribution or a gift to you if the videos only feature you promoting the positive aspects of the city?

CONCLUSION

Based on the facts provided, the payments made by others, at your request, directly to a videographer for the production of videos for your YouTube channel are exempted under Regulation 18215(c)(4). Therefore, the payments do not constitute a contribution to you, an elected official, if the videos only feature you promoting the positive aspects of the city. However, the payments meet the Act’s definition of “gift” and are subject to reporting, as well as the Act’s \$520 gift limit, unless they fall within an exception.

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.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

FACTS AS PRESENTED BY REQUESTER

You are the Mayor of the City of Escondido and you would like to open a YouTube channel where approximately twice a month you post a video of yourself walking around and talking about an area of interest in the city. The videos appearing on your YouTube channel would be roughly modeled after the popular Public Broadcasting Service show “California’s Gold,” but the videos will likely only be 5-15 minutes in length. The working title of the YouTube channel is “Discovering the Hidden Gems of Escondido,” which plays off the Spanish meaning of Escondido which is “hidden.” The idea of the YouTube channel is to promote the positive aspects of the city. You would reference the videos on your personal and your campaign “Mac for Escondido” Facebook accounts. However, the videos will not contain express advocacy or refer to your campaign or election, other than to your title as an elected representative. The videos also will not solicit any contributions for your candidacy and would only showcase different positive aspects of the city.

The question you have is regarding the funding of the videos for the YouTube channel. You found a videographer who would do these videos (approx. 32 videos) for a flat fee of \$3,000 dollars, which was a negotiated price, but which you understand to be similar to other rates you have received from other videographers for other unrelated matters. There may also be some videos simply done by yourself with an iPhone, so not all of them would be edited by a professional. The intent of creating the videos is not to have a re-election campaign tool, but rather to promote the city using social media and at the same time not use re-election monies to promote the city, as the city does not have the resources to support this project.

You would like to know if your friends paid the fee directly to the videographer (e.g., six friends pay \$500 each), at your request, would those payments be contributions under the Act or a reportable gift.³

ANALYSIS

Contributions

A “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 or if it is clear from the surrounding circumstances that the payment is not made for political purposes. (Section 82015.) Regulation 18215 provides that a payment is “made for political purposes” if it is: (1) 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 candidates, or the qualification or passage of any measure; or (2) received by or made at the behest of a candidate.

Section 82007 defines “candidate,” in pertinent part, as any individual who is listed on the ballot for elective office. An individual who becomes a candidate shall retain his or her status as a candidate until such time as that status is terminated pursuant to Section 84214. Thus, as an elected official, you are considered a candidate under Section 82007. Consequently, any payment

³ In addition, you have asked whether the payments may constitute contributions subject to local contribution limits. However, the Commission has authority to advise only in regard to the Act. We cannot advise on the provisions of the local contribution limits.

at your behest is presumed to be for a political purpose and will be considered a contribution absent any exception. (*Danner Advice Letter, A-96-039.*) “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. (Section 82041.3.)

Regulation 18215(c) provides, in pertinent part, that the term contribution does not include:

“... (4) A payment made at the behest of a candidate, which is for a communication by the candidate or any other person, that meets all of the following:

(i) Does not contain express advocacy;

(ii) Does not make reference to the candidate’s candidacy for elective office, the candidate’s election campaign, or the candidate’s or his or her opponent’s qualifications for office; and

(iii) Does not solicit contributions to the candidate or to third persons for use in support of the candidate or in opposition to the candidate’s opponent...”

You have provided that you will request that your friends make payments directly to the videographer for production of the videos for your YouTube channel. Thus, the payments will be made at your behest. However, you also provided that the videos will not expressly advocate any campaign activity or make reference to your candidacy, other than to your title as an elected representative, and will not solicit any contributions for your candidacy. Rather, the videos will feature you walking around the city promoting its positive aspects.

Therefore, the payments for the video production made by your friends at your behest are payments for a communication that is exempted as a contribution under Regulation 18215(c)(4). Based upon the facts provided, the payments do not constitute a contribution to you.

Gifts

Where a payment is not a contribution, it may in some circumstances be considered a gift. “Gift” is defined in Section 82028 as any payment 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. In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by local public officials in three ways:

First, the Act places limitations on the acceptance of gifts by certain public officials. The current limit is \$520 from a single source in a calendar year. (Section 89503; Regulation 18940.2.)

Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on certain public officials requiring that any gift of \$50 or more (or gifts that aggregate to \$50 or more from the same source) received during the calendar year are disclosed on the officials’ statements of economic interests. (Sections 87200-87314.)

Third, the Act prohibits any public official from making, participating in making, or using his or her position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$520 or more provided to, received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100 & 87103(e).)

Here, you have provided that you would ask friends to make the payments directly to the videographer who will then produce videos for your YouTube channel. No facts have been provided as to what, if anything, your friends would receive in return for those payments. Thus, the payments made by your friends to the videographer would be considered reportable gifts under Section 82028, unless an exception applies.

Gift Exception: Regulation 18942(a)(18)(C) and (19)

Regulation 18942 provides in relevant part:

“(a) For purposes of Sections 82028, 82030, and the gift regulations, except as otherwise indicated, the following payments that otherwise meet the definition of gift as provided in Section 82028, subdivision (a) are neither gifts nor income:

...

(18)(C) A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official’s position with the agency, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(D) The limitations placed on the exceptions contained within this paragraph (18) apply to the following persons:

(i) A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.

(ii) A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official’s agency, and for 12 months following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act’s conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.

(iii) A person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.

(19) Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist

registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift."

No facts were provided indicating the nature of your relationship with your friends that you intend to ask to make payments directly to the videographer for the production of the videos for your YouTube channel, but if they meet the requirements of Regulation 18942(a)(18)(C) or (a)(19), the payments would be excluded from the Act's definition of "gift" and would not be reportable.

Conflict of Interest Disqualification

A public official who receives gift(s) of \$520 or more may have a financial conflict of interest under the Act. (Regulations 18700 and 18941.) The official must disqualify himself or herself from voting or otherwise participating in a governmental decision affecting that source, if the payment was received or promised to the official within 12 months preceding the decision. Therefore, if you accept gifts from your friends valued at \$520 or more, you may be prohibited from participating in governmental decisions affecting those sources.

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

Sincerely,

Dave Bainbridge
General Counsel

Katelyn L. Greene

By: Katelyn L. Greene
Counsel, Legal Division

KG:dkv