



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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June 20, 2022

Helen Homes Peak
City of Attorney
City of San Marcos
960 Canterbury Place, Suite 300
Escondido, CA 92025

Re: Your Request for Advice
Our File No. A-22-062

Dear Ms. Peak:

This letter responds to your request for advice on behalf of the San Marcos City Council regarding the behested payment provisions of the Political Reform Act (the “Act”).¹

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

Would the collective letters of support issued by the San Marcos City Council in a bid to secure federal funding for California State University, San Marcos require behested payment reporting should the federal funds ultimately be awarded?

CONCLUSION

No. Where the funds are being solicited from a federal governmental agency principally for a governmental purpose, should they ultimately be awarded, these payments would not require behested payment reporting. (Section 84224(b)(4).)

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 18104 through 18998 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 AS PRESENTED BY REQUESTER

California State University, San Marcos (“CSUSM”) requested that the San Marcos City Council adopt a Resolution to extend letters of support for the construction and build out of a new Integrated Sciences and Engineering Building at its campus. The California University System allocated \$60 million to CSUSM for the next budget cycle, but this amount will not cover the costs of a new building. CSUSM is seeking to secure \$40 million in federal funding and requested the advocacy of the City Council in the form of letters of support to Congressmen Issa and Levin for federal funding from the Labor, Health and Human Services, Education, and Related Agencies Subcommittee for the construction. Congressmen Issa and Levin would not individually make the funding determinations but could use the support letters in their own efforts to secure federal funding.

The City Council considered the request on April 26, 2022 and voted unanimously in favor of issuing such letters of support. The Resolution adopted by the City Council at that time reflects that letters of support were drafted solely to Congressman Issa and Congressman Levin. The funding solicitation, evaluation, and determination process is ongoing. To the City’s knowledge, no decision at the federal level concerning the requested funding has been made.

ANALYSIS

Under Section 82004.5 of the Act, the term “behested payment” includes, in part, a payment made at the behest of² an elected officer, where “it is clear from the surrounding circumstances that the payment was made for purposes unrelated to the officer's seeking or holding of elective office.” (Section 82004.5(c).) A payment made by a state, local, or federal government agency is presumed to be for purposes unrelated to an elected officer’s seeking or holding office. (Section 82004.5(c)(2).)

However, not all behested payments are reportable. Section 84224(b) establishes disclosure requirements for behested payments, and a payment is reportable only if it satisfies each of the following:

- (1) The payment is made at the behest of an elected officer or member of the Public Utilities Commission.
- (2) The behesting elected officer or member of the Public Utilities Commission does not provide full and adequate consideration in exchange for the payment.
- (3) The payment is made principally for a legislative, governmental, or charitable purpose.

² The phrase “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.)

(4) If made principally for a legislative or *governmental purpose*, the *payment is made by a person other than a state, local, or federal governmental agency*. (Emphasis added.)

Accordingly, a payment made by a federal government agency principally for a governmental purpose is not a reportable behested payment, even if requested by an elected official or officials.³

The City Council issued letters of support to Representatives Issa and Levin requesting additional federal funding for a new CSUSM Engineering Building. As these funds – if awarded – would be coming from a federal government agency, they would not be reportable behested payments if made principally for a governmental purpose. We have previously advised that the California State University is a “state agency” (*Knight* Advice Letter, No. A-99-165), and that an individual campus of the California State University is also a “state agency” (*Waggoner* Advice Letter, No. A-85-146). As a state agency, then, payments to support CSUSM would be serving a governmental purpose.

Therefore, the City Councilmembers will incur no behested payment reporting requirements as a result of their request for funds, whether or not awarded.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Erika M. Boyd
Senior Counsel, Legal Division

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³ See Senate Floor Analysis of Assembly Bill 1544, dated September 10, 2015, for policy considerations and legislative intent.