

RAVI MEHTA  
CHAIRMAN



## FAIR POLITICAL PRACTICES COMMISSION

April 18, 1997

Julia A. Moll  
Deputy City Attorney  
City of San Francisco  
Fox Plaza  
1390 Market Street, Fifth Floor  
San Francisco, California 92553

**Re: Your Request for Advice  
Our File No. A-97-161**

Dear Ms. Moll:

This letter is a response to your request for advice regarding the provisions of the Political Reform Act (the "Act").<sup>1</sup> Please bear in mind that nothing in this letter should be construed as evaluation of any conduct which may already have taken place. Further, this letter is based on the facts surrounding your questions as you have presented them to us. The Commission does not act as finder of fact in providing advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71).

### QUESTION

Does Government Code Section 85705 prohibit the members of the Board of Trustees of the San Francisco Fine Arts Museums from contributing to candidates for San Francisco elective offices including candidates for Mayor and the Board of Supervisors?

### CONCLUSION

Section 85705 does not prohibit the members of the Board of Trustees of the San Francisco Fine Arts Museums from contributing to candidates for San Francisco elective offices unless those candidates are members of the Board of Trustees or have otherwise participated in the appointment of members to the Board.

---

<sup>1</sup> Government Code sections 81000 - 91014. Commission regulations appear at title 2, sections 18109 - 18995, of the California Code of Regulations.

## FACTS

The San Francisco Fine Arts Museums are governed by a Board of Trustees. The Board consists of 62 members who are elected by a vote of the Board members pursuant to San Francisco Charter section 5.105. Although the members of most City boards and commissions are appointed by the Mayor or Board of Supervisors, members of the Board of Trustees of the Fine Arts Museums are not.

## ANALYSIS

Section 85705 of the Government Code was recently enacted pursuant to Proposition 208 which was passed by California voters on November 5, 1996. Section 85705 states,

“No person appointed to a public board or commission or as Trustee of the California State University or Regent of the University of California during tenure in office shall donate to, or solicit or accept any campaign contribution for, any committee controlled by the person who made the appointment to that office or any other entity with the intent that the recipient of the donation be any committee controlled by such person who made the appointment.”

On its face, Section 85705 applies only to persons **appointed to public boards or commissions**. We must, therefore, initially determine if Section 85705 applies to the members of the San Francisco Fine Arts Museums with respect to the terms “appointed” [member] and “public board.” According to the language of section 5.105 of the San Francisco Charter, the members of the Board of Trustees are “elected” rather than “appointed.” However, Government Code Section 82022 defines an election as “any primary, general, special or recall election held in this state.” Based on this definition, we conclude that the members of the Board of Trustees are not “elected” but, rather, are “appointed” as that term is intended under Section 85705. With regard to the status of the Board of Trustees as “public,” your letter does not provide an explicit reference to the Board as a public one, but we have assumed that such is true since the Board appears to be created pursuant to the City’s Charter. Accordingly, because the members of the Board of Trustees are “appointed” and because we have assumed that the Board is a public one, Section 85705 applies to regulate the contributions of the members of the Board.

Consistent with other sections of Proposition 208 and the Act, Section 85705 was drafted to further purposes which include, *inter alia*, to “minimize the potentially corrupting influence and appearance of corruption caused by excessive contributions and expenditures in campaigns by providing for reasonable contribution and spending limits for candidates.” (Section 85102(b)). The concern addressed by Section 85705 is the potential for and appearance of corruption when persons appointed to public boards and commissions contribute to the campaigns of those who are responsible for selecting the appointees since contributions create a financial connection between the recipient and donor. Because this financial connection may give rise to the appearance of impropriety, Section 85705 responds by prohibiting appointees

from contributing to those who appoint them.

You have inquired as to whether members of the Board of Trustees for the San Francisco Fine Arts Museums may contribute to candidates for San Francisco elective offices. As long as the candidates are not also members of the Board of Trustees, and were not involved in any other aspect of the appointment process (such as nominating a person for the Board's consideration), no appearance of impropriety would exist to prohibit contributions from members under Section 85705.

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

Sincerely,

Steven G. Churchwell  
General Counsel

A handwritten signature in black ink that reads "Lisa L. Ditora". The signature is written in a cursive, flowing style.

By: Lisa L. Ditora  
Staff Counsel, Legal Division

SGC:LLD:ak