



## FAIR POLITICAL PRACTICES COMMISSION

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March 24, 2000

The Honorable Martin Gallegos  
California State Assembly  
State Capitol, Room 6005  
Sacramento, California 95814

**Re: Your Request for Advice**  
**Our File No. A-00-059**

Dear Assemblymember Gallegos:

This letter is in response to your request for advice regarding the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Are payments made at your behest for an awards breakfast "contributions"?
2. Are payments made at your behest for an awards breakfast "gifts"?
3. May your staff solicit sponsors for the breakfast?

### CONCLUSIONS

1. No. The payments made at your behest for the event are not "contributions" since the breakfast is a governmental event. However, the payments may be reportable.
2. The payments made at your behest for the event are not "gifts," unless the payments confer a personal benefit to you. A payment of food and beverages that you consume confers a personal benefit to you and is therefore a gift.
3. The Act does not prohibit your staff from soliciting sponsors for the event.

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<sup>1</sup> Government Code sections 81000 - 91015. Commission regulations appear at title 2, sections 18109 - 18996, of the California Code of Regulations.

## FACTS

You will be sponsoring a Public Safety Appreciation Awards Breakfast at the Industry Hills Sheraton in the City of Industry on May 6, 2000. The East Valley Boys and Girls Club will also be sponsoring the event.

Your staff will contact each city in your district to identify police officers and firefighters who deserve special recognition for exemplary service to their communities. Once identified, these public safety workers will be honored at the awards breakfast.

Chambers of commerce and local businesses will sponsor the event through financial contributions and donated items such as gift bags and food. The East Valley Boys and Girls Club will be the sole agency responsible for receiving any contributions for the event.

As for publicity, newsletters from individual cities and chambers of commerce will handle this portion of the event. In addition, you might seek the assistance of Member Services in producing programs outlining the accomplishments of the honorees.

## ANALYSIS

### 1. Are the payments contributions?

In general, a payment<sup>2</sup> made to, or at the behest of, a candidate is a "contribution" for purposes of the Act. (Section 82015; Regulation 18215.) However, the term "contribution" has many exceptions. For example, it exempts certain payments made at the behest of a candidate for a legislative, governmental or charitable event:

"(2) A payment made at the behest of a candidate is a contribution to the candidate unless ...

(B) It is clear from the surrounding circumstances that the payment was made for purposes unrelated to his or her candidacy for elective office. The following types of payments are presumed to be for purposes unrelated to a candidate's candidacy for elective office:

(iii) A payment ... made principally for legislative, governmental, or charitable purposes." (Section 82015(b)(2)(B).)

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<sup>2</sup> A "payment" means a payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible. (Section 82044.)

You will be sponsoring a breakfast honoring exemplary public safety personnel from your district. The breakfast appears to be a governmental event. Therefore, any payment made at your behest for the event is not a contribution.

## **2. Are the payments gifts?**

A "gift" is any payment that confers a personal benefit to the extent that equal or greater consideration is not received. (Section 82028(a).) Thus, a payment made at the behest of a candidate for a legislative, governmental, or charitable purpose is not a gift, unless it confers a personal benefit to the candidate. (Section 82015(b)(2)(b)(iii).)

The breakfast appears to be a governmental event. Therefore, any payment made at your behest for the event is not a gift, unless it confers a personal benefit to you. A payment for food and beverages confers a personal benefit on the person consuming the food or beverage. Therefore, if you dine at the awards breakfast, the value of the food and beverages that you consume will be considered a gift. (Regulation 18941.1.) If the value of the meal is \$50 or more, you must report the gift on your statement of economic interests. (Section 87207.)

## **3. May your staff solicit sponsors for the event?**

The Act does not prohibit your staff from asking any person to coordinate the event, provide financial support for the event, or donate items for the event.

## **4. What are your reporting obligations?**

Even though they are not contributions, payments made at the behest of a candidate from a single source for a legislative, governmental, or charitable purpose are reportable if the payments equal \$5,000 or more in a calendar year. (Section 82015(b)(2)(B)(iii).) You must report these payments within 30 days. Once the \$5,000 threshold from a single source has been reached for a calendar year, all payments made by that source in the same calendar year must be disclosed within 30 days.

## **5. Do any exceptions in Regulation 18215(c) apply?**

Individual cities and chambers of commerce will be sending newsletters publicizing the awards breakfast. In addition, you may seek the assistance of Members Services in producing programs outlining the accomplishments of the honorees.

Regulation 18215(c) lists exceptions to the definition of contribution. One exception is a communication that does not contain express advocacy:

“(c) [T]he 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.” (Regulation 18215(c)(4).)

Accordingly, any communication distributed at your behest in connection with the awards breakfast is not a contribution if the requirements in Regulation 18215(c)(4) are met.

#### **6. Does the mass mailing prohibition apply?**

Under Section 89001, a mass mailing may not be sent at public expense if all of the following four criteria apply, and an exception in Regulation 18901(b) does not apply:

1. The item sent is delivered, by any means, to the recipient at his or her residence, place of employment or business, or post office box; and the item is a tangible item, such as a videotape, record, or button, or a written document.
2. The item sent either: (1) includes the name, office, photograph, or other reference to an elected officer affiliated with the agency which produces or sends the mailing, and is prepared or sent in cooperation, consultation, coordination, or concert with the elected officer, or (2) features an elected officer affiliated with the agency which produces or sends the mailing.
3. Any of the costs of distribution are paid for with public moneys; or the costs of design, production, and printing exceeding \$50 are paid for with public moneys, and the design, production, or printing is done with the intent of sending the item other than as permitted.
4. More than 200 substantially similar items are sent, in a single calendar month, excluding any item sent in response to an unsolicited request. (Regulation 18901(a).)

It does not appear that the mass mailing prohibition will apply to the communications you describe in your request. First, an announcement in a city's newsletter does not meet the second requirement because, as a state legislator, you are not affiliated with a city. Second, it does not appear that an announcement in a chamber of commerce newsletter will be paid for with public funds. Finally, the programs for the event will not be mailed to anyone.

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

Sincerely,

Luisa Menchaca  
Assistant General Counsel

A handwritten signature in cursive script that reads "Julia Bilaver".

By: Julia Bilaver  
Staff Counsel, Legal Division

LM:JB:tls