



FAIR POLITICAL PRACTICES COMMISSION

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April 21, 2009

Linda Filchev
Counsel III, Legal Division
Public Utilities Commission
505 Van Ness Avenue
San Francisco, CA 94102

Re: Your Request for Informal Assistance
Our File No. I-09-073

Dear Ms. Filchev:

This letter responds to your request for advice regarding the provisions of the Political Reform Act (the "Act").¹ This letter should not be construed as assistance on any conduct that may have already taken place (see Regulation 18329(b)(8)(A)) and is based on the facts presented. The Fair Political Practices Commission (the "Commission") does not act as a finder of fact when it renders assistance. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your questions are general in nature, we are treating your request as one for informal assistance.² Additionally, our advice is limited to obligations arising under the Act.

QUESTIONS

1. Is a payment made on or after January 1, 2009, a reportable behested payment if the payment is made in response to a request by a member of the California Public Utilities Commission (the "PUC") made prior to January 1, 2009?

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), copy enclosed.)

2. Is a payment made on or after January 1, 2009, a reportable behested payment if the payment is made after a member of the PUC is appointed to office but in response to a request by the member made prior to the member's appointment?

3. If a member of the PUC is on the board of directors, an advisory council, or a fundraising committee of a charitable organization, is a donation to the organization a reportable behested payment?

4. Is a donation to a charitable organization in response to a letter soliciting the donation a reportable behested payment if the name of a member of the PUC holding a position with the organization is identified in the letterhead or text of the letter?

CONCLUSIONS

1. A payment for a legislative, governmental, or charitable purpose of \$5,000 or more (or payments aggregating to \$5,000 or more from the same source) made at the behest of a member of the PUC must be reported as a behested payment if the payment is made on or after January 1, 2009, even when the payment is in response to a request made by the member prior to January 1, 2009.

2. A payment for a legislative, governmental, or charitable purpose of \$5,000 or more (or payments aggregating to \$5,000 or more from the same source) made on or after January 1, 2009, at the behest of a member of the PUC, must be reported as a behested payment if the payment is made after the member is appointed to office even when the payment is in response to a request by the member made prior to the member's appointment.

3. A donation to a charitable organization is not a reportable behested payment merely because a member of the PUC serves on the board of directors, an advisory council, or a fundraising committee of the organization. A payment to the organization is made at the behest of a member of the PUC only if the payment is solicited, requested, or suggested by the member or otherwise made to the organization in cooperation, consultation, coordination with, or with the consent of the member.

4. As described below, the formatting and specific text of the solicitation letter, rather than the mere appearance of the PUC member's name, will determine whether or not a donation made in response to the letter is a payment made at the behest of the member subject to reporting.

FACTS

You are an attorney with the PUC and are requesting advice on behalf of the members of the PUC. In general, you seek informal assistance relating to the recently added provisions of Section 82015(b)(3), which requires members of the PUC to report

payments made at their behest and was effective January 1, 2009. More specifically, you ask whether a payment is subject to reporting if the PUC member's request for the payment was made prior to January 1, 2009, or prior to the member being appointed to office. In addition, you ask that we clarify when donations to a charitable organization must be reported by a member of the PUC if the member serves on the board of directors, an advisory council, or a fundraising committee of the organization.

ANALYSIS

Effective January 1, 2009, Section 82015(b)(3) requires members of the PUC to report payments made at their behest (also known as a "behested" payment) exceeding a specified threshold. More specifically, Section 82015(b)(3) provides the following:

"A payment made at the behest of a member of the Public Utilities Commission, made principally for legislative, governmental, or charitable purposes, is not a contribution. However, payments of this type shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made."

A report filed by a member of the PUC under Section 82015(b)(3) is a public record subject to inspection and copying. The report must contain the "name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made." The PUC must forward a copy of the report to the Commission within 30 days of receiving the report.

1. Is a payment made on or after January 1, 2009, a reportable behested payment if the payment is made in response to a request by a member of the PUC made prior to January 1, 2009?

Section 82015(b)(3) requires a member of the PUC to report a payment (or payments from the same source) of \$5,000 or more in the same calendar year within 30 days. In interpreting a statute, the Commission follows the same canons of statutory construction employed by the courts. "If the terms of the statute are unambiguous, we presume the lawmakers meant what they said, and the plain meaning of the language governs." (*Johnson Advice Letter, No. A-08-032, citing Britton v. Dallas Airmotive, Inc. (2007) 153 Cal.App.4th 127, 132.*) Under the plain language of Section 82015(b)(3), the actual payment triggers the reporting requirements, not the PUC member's request for the payment. Accordingly, we do not find ambiguity in Section 82015(b)(3), which requires the reporting of all behested payments made on or after January 1, 2009, even if the requests for the payments were made prior to this date.

2. Is a payment made on or after January 1, 2009, a reportable behested payment if the payment is made after a member of the PUC is appointed to office but in response to a request by the member made prior to the member's appointment?

As stated above, the plain language of 82015(b)(3) triggers reporting on the date of the actual payment, not the date on which the request for the payment is made. Accordingly, we find that a payment made on or after January 1, 2009, at the request of a member of the PUC, is subject to reporting as a behested payment if the payment is made after the member's appointment to office even if the request for the payment was made prior to the member's appointment.

Moreover, this interpretation is the most consistent with the purposes of the Act. Section 82015(b)(3) helps to ensure that members of the PUC perform their duties in an impartial manner, free from bias caused by the financial interests of those persons who have supported them. (See Section 81001(b).) In order to ensure that all interests are fully disclosed, it is necessary that all behested payments made after the member has been appointed to office are reported even if the member's request for the payment occurred prior to the member's appointment.

3. If a member of the PUC serves on the board of directors, an advisory council, or a fundraising committee of a charitable organization, is a donation to the organization a reportable behested payment?

Under Section 82015(b)(3), a payment is subject to reporting only if it is made at the behest of a member of the PUC. A PUC member's position with a charitable organization does not determine whether any particular payment has been made at the behest of the member. A payment is made at the behest of a member of the PUC if the payment is solicited, requested, or suggested by the member or otherwise made to the organization in cooperation, consultation, coordination with, or with the consent of the member. (See Regulation 18225.7(a).) Accordingly, a donation to a charitable organization is not a reportable behested payment merely because a member of the PUC serves on the board of directors, an advisory council, or a fundraising committee of the organization. If you need additional assistance determining whether any particular donation made to the charitable organization was made at the behest of a PUC member holding a position with the organization, you should seek further advice providing the factual context of the donation.

4. Is a donation to a charitable organization made in response to a letter soliciting the donation a reportable behested payment if the name of a member of the PUC holding a position with the organization is identified in the letterhead or text of the letter?

As stated above, a payment must be reported under Section 82015(b)(3) if it is made at the behest of a member of the PUC. You ask whether a donation to a charitable

organization is a reportable behested payment when it is made in response to a letter from the organization soliciting the donation and containing the name of a PUC member who holds some position with the organization. Generally, whether or not the donation to the organization is a behested payment will depend on the specific formatting and text of the letter. Therefore, without examining the letter itself, we cannot give a definitive answer to this question.

Nevertheless, we provide the following general guidelines to assist your members in knowing whether they may have to report donations to a charitable organization as behested payments when their names appear in a letter soliciting the donations:

1. We think the general test for determining if a donation to a charitable organization made in response to a letter soliciting a donation and containing the name of a PUC member is a reportable behested payment is whether a reasonable person could conclude the letter is from or on behalf of the member.³

2. As a general rule, we do not believe a reasonable person would conclude the letter is from or on behalf of a PUC member if the member's name appears solely in a roster listing of a group of all officers or board members of the organization, the listed group does not consist of a majority of elected officers or PUC members who are subject to behested payment reporting under Section 82015(b)(2)(B)(iii) or 82015(b)(3), and the member's name is not highlighted or singled out from the group by use of format, type face or another similar method. Our conclusion would be the same if the member's name is similarly listed in a roster of all members of an "honorary," advisory, fundraising or similar committee or group of the organization assembled for the purpose of charitable fundraising. Thus, there would generally be no behested payment report in these circumstances.

3. However, we think a reasonable person could conclude the letter is from or on behalf of a PUC member, requiring the member to report donations to the charitable organization made in response to the communication as behested payments, under any of the following circumstances:

a. The communication is signed or clearly made by the PUC member.

b. Even though the PUC member's name appears in the type of roster listing described in 2 above, the listing in the roster meets any of the following criteria: (i) the group does not include all individuals who hold similar positions with the organization; (ii) the group consists of a majority of elected officers or PUC members who are subject

³ Note that if the formatting and specific text of the letter could lead a reasonable person to conclude that the letter is from or on behalf of a PUC member identified in the letter, the payment by the charitable organization for the letter may be a reportable behested payment in addition to the any donations made in response to the letter.

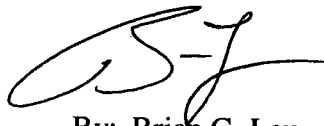
to behested payment reporting under Section 82015(b)(2)(B)(iii) or 82015(b)(3)⁴; (iii) the PUC member is the only person listed under a particular roster heading; or (iv) the member's name is highlighted or singled out from the group by use of format, type face or another similar method.

c. The PUC member's name appears in some other part of the communication and one could reasonably conclude from the circumstances that the communication was from or on behalf of the member.

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

Sincerely,

Scott Hallabrin
General Counsel



By: Brian G. Lau
Counsel, Legal Division

BGL:jgl

Enclosure

⁴ In this situation, each elected officer and PUC member whose name appears in the roster listing and who is also subject to behested payment reporting under Section 82015(b)(2)(B)(iii) or 82015(b)(3) would be required to report the full value of each reportable donation received by the organization in response to the communication.