



## FAIR POLITICAL PRACTICES COMMISSION

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January 7, 2010

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Re: Your Request for Advice  
**Our File No. A-09-273**

Dear Councilmembers:

This letter responds to your request for advice regarding the “behested payment” provisions of the Political Reform Act (the “Act”).<sup>1</sup> We base our advice on the facts you present; the Fair Political Practices Commission (the “Commission”) does not act as a finder of fact when it renders advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.)

### QUESTION

Does Section 82015(b)(2)(B)(iii) require that a report be filed by each of two candidates who jointly solicited two charitable contributions of \$5,000?

### CONCLUSION

Yes. Both reports are required by the plain meaning of the statute, whose purpose would be subverted by an interpretation that acts to reduce reporting.

### FACTS

Last October you assisted The Alpha Project (a non-profit organization that helps the homeless population in San Diego) by sponsoring the Annual Fall Fiesta, an event serving as a vehicle for fundraising in support of The Alpha Project, which has thus far received a total of \$61,000 as a result of this fundraising effort. Two contributors gave

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<sup>1</sup> 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.

\$5,000 each, while the remaining contributors gave less than that sum. You understood that the Act requires a public official to report such donations, if they total \$5,000 or more, as payments made at the official's behest. However, you were uncertain whether you would be required to report these donations as "behested payments" since the event was a joint project, with each councilmember considered to be responsible for half of the funds raised. You decided to ensure that you would be in full compliance with the Act by seeking advice on your reporting obligations under these circumstances.

Taking a cautious approach pending this written advice, you reported the two \$5,000 contributions as "behested payments" but, because you divided responsibilities equally between yourselves, you believe that each of these \$5,000 donations should be regarded as an amalgamation of two separate \$2,500 contributions, only one of which should be attributed to each councilmember. If this were the case, because the sum attributable to each councilmember would be just half the \$5,000 reporting threshold, there should have been no reporting obligation for either of these \$5,000 contributions.

### ANALYSIS

The Act defines the term "contribution" to include a payment made at the behest of a candidate.<sup>2</sup> (Section 82015(b).) A payment is made "at the behest" of a candidate whenever it is 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" a candidate. (Section 82015; Regulation 18225.7.)

Section 82015(b)(2) describes a number of exceptions to the general rule that a payment made at the behest of a candidate is a contribution; payments made principally for legislative, governmental or charitable purposes are neither a contribution nor a gift. Section 82015(b)(2)(B)(iii), however, provides that, even if a payment made at the behest of an elected officer is not a contribution to that official, he or she must file a report describing the payment if it was made principally for a legislative, governmental or charitable purpose. This "behested payment report" must be filed within 30 days when the amount of the payment, or of payments for similar purposes made by the same source at the behest of the official, is \$5,000 or more within a calendar year.

Your inquiry presupposes payments of this nature, but poses a question on how to determine that the \$5,000 reporting threshold has been reached when a payment is made at the behest of more than one candidate. In effect, you find the statute ambiguous in any case where two or more candidates work together, because the pertinent language in Section 82015(b)(2)(B)(iii) refers only to payments "behested" by a single candidate:

"However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand

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<sup>2</sup> Under the Act, an incumbent elected officer retains his or her status as a "candidate" during his or her tenure in office. (Sections 82007, 84214.)

dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made.”

We read the plain language of this statute as providing that whenever a candidate who is an elected officer requests a payment of \$5,000 or more, he or she must report that he or she had requested the payment, once the payment is made. If two or more such candidates had made the same request, whether independently or acting in concert, each must file a report because each is presumptively likely to appreciate the generosity of the donor in proportion to the size of the contribution. Nothing in the language suggests that candidates who work together can or should apportion among themselves “responsibility” for the payment, and use their own assessment to raise their reporting threshold.

If we were to grant your point that the language of the statute is ambiguous on the treatment of candidates soliciting charitable contributions in concert, we would employ tools of statutory construction to establish its meaning. But we would still find that the statute cannot be read to provide a different rule for cases where more than one candidate “behests” a payment, because the purpose of the statute is best served when we do not read into it a rule for joint fundraising activities that would raise the reporting threshold.

The statute in question is designed to address one of the core concerns of the Act – the influence that wealthy donors may gain over elected officials. The Act is prefaced by a series of eight “Findings and Declarations” at Section 81001, which elaborate a fundamental concern that state and local public officials should not be influenced by the wealth of persons or interests competing for their attention. The Act’s disclosure rules further this central concern for unbiased governmental decisionmaking by ensuring that the public is kept abreast of payments made to the officials themselves, to their various campaign committees, or to other persons or entities in which the official has indicated a strong interest, which can of course be evidenced by an official’s fundraising efforts on behalf of favored interests.

Any interpretation of Section 82015(b)(2)(B)(iii) that raises the reporting threshold for “behested” payments necessarily reduces the reporting of such payments, as your own situation illustrates. You filed reports believing that, if the Act is construed as you feel it should be, the reports would not have been required since each of you was “responsible” only for one half of each \$5,000 contribution. If four officials had worked together with equally divided “responsibility” for the resulting contributions, reports would have been required only for payments of \$20,000 or more. It would also be consistent with such an approach to depart from an “equal” apportionment among members of a group, in light of their varied fundraising talents or time commitments, raising the reporting threshold for one or two members even higher than the threshold for other members.

The subjectivity involved in the apportionment of relative “responsibility” for a given contribution raises an obvious concern that such an approach would open the door to cynical manipulation of reporting rules. But our most serious reservation relating to

such a reading of the statute is that the relative “responsibility” of a given candidate for a given contribution has little or nothing to do with the Act’s core concern regarding the influence gained by generous donors. If your fundraising effort had recruited a donor who “stepped up to the plate” with a contribution of \$10,000, we presume that you would both have recognized the generosity of this donor as surpassing that of all others, a fine showing especially in a weak economy. Under your interpretation of the statute, you would have reported this “behested” payment. But if you had been joined by a third official, as committed to the project as you were, *none* of you would have filed a report. Yet this most generous donor would have caught the eye of not two officials, but of three.

For the reasons outlined above, we conclude that any interpretation of Section 82015(b)(2)(B)(iii) that reduces reporting by interested candidates as their numbers grow works against the fundamental purpose of the statute, an outcome required neither by the plain meaning of the statute, nor by settled rules of statutory construction.

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

Sincerely,

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General Counsel



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