



## FAIR POLITICAL PRACTICES COMMISSION

428 J Street • Suite 620 • Sacramento, CA 95814-2329

(916) 322-5660 • Fax (916) 322-0886

August 15, 2012

Gregory D. Totten  
District Attorney  
Hall of Justice  
800 South Victoria Avenue, Suite 314  
Ventura, CA 93009

Re: Your Request for Advice  
Our File No. A-12-101

Dear Mr. Totten:

This letter responds to your request for advice regarding the gift and contributions provisions of the Political Reform Act (the "Act").<sup>1</sup> Our assistance is based solely on the provisions of the Act; we offer no opinion on the application, if any, of other bodies of law. The Fair Political Practices Commission ("the Commission") does not act as a finder of fact (*In re Oglesby* (1975) 1 FPPC Ops. 71); therefore, our assistance is based only upon the facts you have provided.

### QUESTION

If the Ventura County Law Enforcement Coordinating Committee obtained voluntary legal services from a private attorney would the organization or its members be subject to any prohibitions or reporting requirements under the Act?

### CONCLUSION

The Ventura County Law Enforcement Coordinating Committee is not prohibited from accepting voluntary legal services from a private attorney. However, there may be behested payment reporting obligations for some of its members.

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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.

## FACTS

You are the District Attorney of Ventura County and are a member of the Ventura County Law Enforcement Coordinating Committee (VCLECC). VCLECC is a law enforcement policy-setting body that includes the District Attorney, the Sheriff, Police Chiefs for five cities in Ventura County and a CHP Commander. The Committee meets monthly to share information, build strategies, develop action plans to meet the challenges faced by law enforcement and respond to public safety issues in the county. The committee is not a governmental agency. The Committee acts as an unincorporated association and has been in existence for over 20 years. Though the committee may endorse candidates for office from time to time it does not raise money for this or any other purpose. The District Attorney and the Sheriff are elected officials.

A private attorney has offered his services to VCLECC free of charge. If VCLECC retained the attorney, the attorney would be a volunteer and would not be paid by anyone for services he provides to VCLECC. You would like to know if there is any prohibition under the Act against VCLECC accepting free legal services from a private attorney and if the services would be a reportable gift for the VCLECC or its members.

## ANALYSIS

### Gifts

Section 82028(a) defines "gift" as a "payment that confers personal benefit on the recipient, to the extent that consideration of equal or greater value is not received." If an attorney were retained by VCLECC it appears that the attorney would not be conveying a personal benefit on any single member of VCLECC but would be providing pro bono services to an organization dedicated to public service and improving the safety of communities. Therefore, the services of the volunteer attorney would not be a gift to the members of VCLECC.

### Contributions and Behested Payments

Section 82015 defines "contribution" as any payment, forgiveness of a loan, a payment of a loan by a third party, or an enforceable promise to make a payment except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes. A payment is made for political purposes if it is: (1) for the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or (2) received by or made at the behest of a candidate. (Regulation 18215(a).)

A "contribution" includes a payment made at the behest of a candidate. (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.) The term "payment" includes an expenditure of money (*see* Section

82044), and an expenditure made at the behest of a candidate includes "expenditures made by a person other than the candidate or committee, to fund a communication relating to" a candidate who is clearly identified. (Regulation 18225.7(b).)

However, because the free legal services you described will not be offered for a political purpose, they are not a contribution under the Act pursuant to Section 82015 and Regulation 18215.

Personal services are rendered for political purposes if they are carried on for the purpose of influencing or attempting to influence the actions of the voters for or against the election of one or more candidates. The volunteer services that would be provided by the private attorney to VCLECC do not appear to be for the purpose of influencing the actions of voters, but rather to help further law enforcement policy.

Assuming the free legal services from a private attorney to VCLECC are provided "principally for governmental or charitable purposes," behested payments reporting may apply. The Act presumes that payments made "principally for legislative, governmental, or charitable purposes" are neither gifts nor contributions. (Section 82015(b)(2)(B)(iii).)

Section 82015(b)(2)(B)(iii) of the Act states that if an individual or entity, at the behest of an elected officer, makes monetary or in-kind donations totaling \$5,000 or more in a calendar year for a legislative, governmental or charitable purpose, that officer has to file a report detailing those donations with his or her public agency within 30 days after reaching the \$5,000 threshold and each 30 days thereafter for additional donations by the same donor.<sup>2</sup> The report is filed on FPPC Form 803, entitled "Behested Payment Report." Thus, since the work an attorney may perform at the request of the VCLECC is related to governmental business, to the extent that a person provides services worth \$5,000 or more for the VCLECC and no exception or other qualification applies, elected officers associated with the VCLECC will be required to file behested payment reports. If the donated legal services total \$5,000 or more, members of VCLECC who are elected officers (the District Attorney and Sheriff) must account for and report the full value of the legal services to VCLECC on his or her Behested Payment Report.

Regulation 18215.3(c) provides that a payment behested<sup>3</sup> by an elected officer and made by a local, state or federal government agency is not subject to reporting under Section

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<sup>2</sup> Section 82015(b)(3) provides a similar requirement for members of the Public Utilities Commission.

<sup>3</sup> Regulation 18215.3(a) defines "behest" for purposes of Section 82015(b)(2)(B)(iii) as "under the control or at the direction of, in cooperation, coordination, consultation, or concert with, at the request or suggestion of, or with the express, prior consent of" the elected officer. Note, however, that based on the language in Section 82015(b), we have consistently advised that behested payment reporting only applies to in-kind payments such as donations of goods or services or to payments made directly to a third party such as a non-profit organization helping to run an event or a vendor. If a payment for a legislative, governmental or charitable purpose is made directly to an elected officer or his or her agent such as a staffer in the official's agency, it will be analyzed as either a direct campaign contribution to the elected officer under Section 82015(a) or a gift to the elected officer under Section 82028.

82015(b)(2)(B)(iii) so long as the payment is used in the course of official agency business. Though the work of the VCLECC relates to governmental issues, the work the VCLECC is not official agency business. Therefore, this exception to the behested payment reporting requirements does not apply to the VCLECC.

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

Sincerely,

Zackery P. Morazzini  
General Counsel



By: Sukhi K. Brar  
Counsel, Legal Division

SKB:jgl