



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

November 16, 2015

Kelli Furtado
Deputy Chief of Staff
Office of Mayor Swearingin
2600 Fresno Street, #2072
Fresno, California 93721

Re: Your Request for Advice
Our File No. A-15-209

Dear Ms. Furtado:

This letter responds to your request on behalf of Ashley Swearingin, the Mayor of the City of Fresno, for advice regarding the behested payment provisions of the Political Reform Act (the "Act")¹ 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 advice. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Additionally, our advice is based solely on the provisions of the Act. We offer no opinion on the applicability of other laws.

QUESTION

Is Mayor Swearingin required to file a "Behested Payment Report" for donations or grants made to a nonprofit organization on which she serves as a board member where she does not solicit donations, engage in any of the organization's fundraising activities and her name, photograph, or signature do not appear on any of the organization's requests for funding?

CONCLUSION

No. Under the facts you have provided, the organization's requests for funding do not "feature" Councilmember Swearingin and, therefore, any donations received in response to the requests are not made at her behest.

FACTS

Mayor Swearingin serves on the board of a nonprofit organization. She is the only elected officer serving on the board. The organization employs a fundraising consultant who solicits funds in the form of donations or grants. The consultant raises funds by requesting meetings with key

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.

individuals associated with a potential donor. Written requests are used only if the prospective donor requests one. The request letters are written on the organization's letterhead, which does not list the names of the board members. The board's CEO signs the letters. Mayor Swearengin is not mentioned and her photograph does not appear in the written requests nor does she sign the request letters. In the case of grants, the names of the board members do not appear on the organization's stationery or grant applications. A list of board members, however, together with the offices they hold, is provided upon the granting entity's request.

The Mayor does not solicit funds for the organization. The consultant handles all aspects of fundraising. The only input by the Board is to offer comments on the fundraising plan that the consultant develops and presents to the Board. It is not necessary for the Board to approve the plan. On occasion, during Board discussion, a Board member may offer to contact a potential donor to request the donation. Mayor Swearengin has not done so and does not intend to do so.

ANALYSIS

Payments made principally for legislative, governmental or charitable purposes of \$5,000 or more (in the aggregate from the same source) in the same calendar year must be reported within 30 days when made at the behest of an elected officer. (Section 82015(b)(2)(B)(iii).) The purpose of the "behested payment" reporting requirements is to capture reporting for payments that are not direct contributions to elected officials, but payments in which the public would have an interest, given the official's role in the exchange.

Regulation 18215.3(a) states that a payment is made at the behest of an elected officer when 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 the elected officer."

Regulation 18215.3(b) provides a limited exception to the behested payment reporting requirements for payments made in response to a nonprofit organization's fundraising letter. The exception provides that where the payment is made in response to a fundraising solicitation from a charitable organization, the payment is not made at the behest of an elected officer so long as the solicitation does not "feature" the elected officer.

A solicitation "features" an elected officer when it "includes the elected officer's photograph or signature, or singles out the elected officer by the manner of display of his or her name or office in the layout of the document, such as by headlines, captions, type size, typeface, or type color," or when the "roster or letterhead listing the governing body contains a majority of elected officers." (Regulation 18215.3(b).)

You state that Mayor Swearengin does not solicit donations for the organization nor do any of the organization's written solicitations bear her name, photograph or signature. Under these facts, we find that the solicitations do not "feature" Councilmember Swearengin and, therefore, any donations received in response to such solicitations are not made at her behest.

We base our conclusion on the specific, limited facts provided. Commission advice may not be the same given different facts and circumstances. If the organization changes the manner in

which it raises funds and there is a question as to whether donations are made at Councilmember Swarengin's behest, we recommend that she write in for further advice.²

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

Sincerely,

Hyla P. Wagner
General Counsel



By: Valentina Joyce
Counsel, Legal Division

VJ:jgl

² For example, if future requests will include the names of board members, Mayor Swarengin will need to consider whether the use of her name falls within the exception. In this regard, please note that recently enacted legislation treats funds coming from a government agency and those coming from a private party differently. An elected officer is no longer required to report donations that are made by a government entity in response to the elected officer's request. (AB 1544.)