



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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October 23, 2018

Rhonda Garietz, CMC
Chief Deputy City Clerk
City of Santa Maria
110 East Cook Street, Room 3
Santa Maria, CA 93454

Re: Your Request for Informal Assistance
Our File No. I-18-175

Dear Ms. Garietz:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act ("Act").¹ Please note that we are only providing advice under the gift provisions of the Act and not under other prohibitions such as the common law or Section 1090.

Also, note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71); any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTION

Is the City of Santa Maria required to file a Form 801 to report donations received from Santa Maria Police Council for items to be used by agency officials, such as ballistic vests, helmets, Tasers, and bicycles?

CONCLUSION

The City of Santa Maria is not required to file a Form 801 to report the donations that are used to purchase equipment, such as ballistic vests, helmets, Tasers, and bicycles for non-designated officials. Moreover, the City is not required to file a Form 801 to report the donation to purchase equipment, such as ballistic vests, helmets, Tasers, and bicycles for the collective use of the department that are not assigned to a specific designated official. Under either of these circumstances, the donations are not reportable or restricted gifts under the Act. However, we caution that a gift may result if a donation is used to purchase equipment used exclusively by designated officials depending on the specific nature of the purchase. If a donation will be used to

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.

purchase equipment used exclusively for designated officials, you should seek additional advice specifically identifying the item to be purchased.

FACTS AS PROVIDED BY REQUESTOR

The City of Santa Maria has several nonprofit organizations whose mission is to provide funds for City operations. For example, the nonprofit and community member-controlled organization, Santa Maria Police Council, raises funds exclusively for the benefit of the City of Santa Maria Police Department ("Police Department"). The Santa Maria Police Council provides donations for things like ballistic vests, helmets, Tasers, bicycles, and helmets for bike patrol, etc. These items are generally used by the entire police department, consisting of several designated Sergeants, Commanders, Lieutenants, and Chiefs, as well as non-designated rank-and-file police officers, who comprise a majority of the Department.

The Police Council has a legal obligation to provide any funds it raises to the Police Department. However, if the Police Council does not raise any funds, it is not legally obligated to make a payment to the Police Department.

ANALYSIS

Section 87300 provides that every "agency" shall adopt and promulgate a conflict-of-interest code pursuant to Article 3 of the Act. Section 82003 defines "agency" as any state agency or local government agency. "Local government agency" is defined in Section 82041 to include "a district of any kind" or any "department, division, bureau, office, board, commission, or other agency" of a district. The Santa Maria Police Department is a local government agency and required to adopt and promulgate a conflict-of-interest code.

A conflict-of-interest code enumerates the positions within the agency that make or participate in making decisions that may have a foreseeable and material effect on any financial interest. (Section 87302.) Persons designated in the conflict-of-interest code are "designated employees," a term that includes any "officer, employee, member, or consultant" of an agency whose position involves making or participating in making decisions that may have a foreseeable and material effect on any financial interest. (Section 82019(c).) You have stated that the donations are generally used to purchase items for the benefit of the entire Police Department, consisting of several designated Sergeants, Commanders, Lieutenants, Chiefs, as well as several non-designated rank-and-file police officers, who comprise the vast majority of the Department.

The Act defines a gift as "any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received..." (Section 82028.) The Act prohibits certain public officials from accepting gifts from any single source in a calendar year with a total value of more than \$470. (Section 89503; Regulation 18940.2.) Under the Act, an employee of a local government agency who is designated in the agency's conflict of interest code may not accept gifts from any single source totaling more than \$470 in a calendar year if the employee is required to report receiving income or gifts from that source on his or her Statement of Economic Interests. (Section 89503(c).) In addition, officials who are subject to these gift limits must report gifts totaling \$50 or more in a calendar year from a single source on their Statements of Economic Interests. (Sections 87207 and 87302.)

Regulation 18944 sets forth circumstances under which a payment made to a government agency is not treated as a gift to the agency official who receives a personal benefit in its use when the payment is controlled by the agency and used for agency business.² (See *Hahn* Advice Letter, No. A-10-064.) The regulation requires state and local government agencies to disclose these payments on a Form 801. If a third-party payment strictly benefits the agency as a whole and will result in no personal benefit to an agency public official, Regulation 18944 does not apply and a Form 801 is not required. (*Frederick* Advice Letter, No. I-09-020.)

In this case, the donations from the Police Council are provided to the Police Department for fulfilling a governmental purpose in that the funds are used to buy items such as ballistic vests, helmets, Tasers, bicycles, and helmets for patrol. To the extent that these items are provided to non-designated officials, the donations are not reportable or restricted gifts under the Act. Moreover, so long as the equipment is for the collective use of the department and are not assigned to a specific designated official, the donations benefit the agency as a whole and are not considered reportable or restricted gifts under the Act. Under either of these two circumstances, it is unnecessary for the Police Department to report the donations pursuant to Regulation 18944.

Nonetheless, we must caution that donations used to purchase equipment specifically assigned to or used exclusively by designated officials may be reportable and restricted gifts under the Act depending on the specific nature of the purchase. To the extent that a gift is provided to a designated official but the Police Department complies and reports the payments as provided in Regulation 18944, designated officials will not be required to report the gifts on their individual statements of economic interest and will not be subject to the Act's \$470 gift limit. If you need further assistance regarding donations that will be used to purchase equipment specifically assigned to or used exclusively by a designated official, you should seek further advice identifying the nature of the item to be purchased.

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

Sincerely,

Dave Bainbridge
General Counsel



By: Ryan P. O'Connor
Counsel, Legal Division

RPOC:jgl

² On January 1, 2012, former Regulation 18944.2 became Regulation 18944 with the substance of the former regulation wholly incorporated into the new regulation.