



STATE OF CALIFORNIA  
FAIR POLITICAL PRACTICES COMMISSION  
1102 Q Street • Suite 3000 • Sacramento, CA 95811  
(916) 322-5660 • Fax (916) 322-0886

April 18, 2019

Honorable Luz M. Rivas  
Assemblymember 39<sup>th</sup> District  
State Capitol  
P O Box 942849  
Sacramento, CA 94249-0039

Re: Your Request for Advice  
**Our File No. I-19-056**

Dear Assemblymember Rivas:

This letter responds to your request for advice regarding the behested payment provisions of the Political Reform Act (the “Act”).<sup>1</sup> Because your inquiry is general in nature, we are treating your request as one for informal assistance.<sup>2</sup>

Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and 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

Are payments in response to a fundraising solicitation that “features” you pursuant to Regulation 18215.3(b),<sup>3</sup> payments “made at the behest of” an elected officer, where you granted the

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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.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

<sup>3</sup> Regulation 18215.3(b) states:

A payment is not “made at the behest of” an elected officer under Section 82015(b)(2)(B)(iii) or a PUC member under Section 82015(b)(3) and is not subject to behested payment reporting if the payment is made in response to a fundraising solicitation from a charitable organization requesting a payment where the solicitation does not feature an elected officer or PUC member.

(1) For purposes of this regulation “features an elected officer or PUC member” has the same meaning as found in Regulation 18901(c)(2)[this language is currently located in Section 89002(c)(2)]: “Features an elected officer” means that the item mailed includes the elected officer’s photograph or signature, or

soliciting organization permission to use your name or likeness, to feature you as an honoree, or list you as a member of an honorary committee for the fundraiser?

## CONCLUSION

Yes. A payment is “made at the behest of” an elected official if 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. Where you provide express prior consent to be “featured” in the solicitation (through the use of your photograph, signature, singled out name, or as a part of the listed honorary committee) for the fundraiser, payments in response will meet the definition of a payment “made at the behest of” the elected officer and are subject to the reporting requirements.

## FACTS AS PRESENTED BY REQUESTER

You are a State Assemblymember elected to the 39<sup>th</sup> District. Charitable organizations often request that you serve on an honorary committee for a fundraising event. You state this is a “purely ceremonial role and reactive in nature.” Where the organization requests to display your photo, or use your name or likeness in a solicitation, you typically grant them permission to do so. Beyond this activity, you do not further involve yourself in the event’s fundraising or logistics. You note that you maintain no discretion, authority, duties or obligations related to fundraising for these events. Neither you nor your staff review solicitations in connection with these events, or suggest or direct organizations to include such content in their materials. The organizations hosting these events do not usually share their fundraising information, such as the names of donors and the amount of their donation, unless the information is necessary to comply with reporting under the Act. In most cases, you are not required to attend the event.

Charitable organizations also may request that you serve as an honoree at such events. When serving as an honoree, your involvement is essentially the same as where you serve as an honorary committee member. You do not participate in the organization’s fundraising or its logistics. Neither you, nor your staff, receive donor information, except when necessary to comply with reporting requirements.

You enclosed a mock-up of the type of fundraising solicitation at issue. This solicitation includes a photo of an elected officer, with “Honoring: Assemblymember Robert Dowdy” written

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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.

(2) An elected officer or PUC member is also featured in a solicitation if the roster or letterhead listing the governing body contains a majority of elected officers (Section 82015(b)(2)(B)(iii)) or PUC members (Section 82015(b)(3)).

(Please note: this regulation contains outdated references to Section 82015, reflecting its language prior to amendments in 2017. It is scheduled for clean-up amendments in 2019.)

beneath the photo and an “honorary committee” roster listing which indicates that all the committee members are elected officers.

## ANALYSIS

### *Behested Payments: Charitable Payments and Solicitations that Feature an Elected Officer*

Payments made to candidates for political purposes meet the definition of a “contribution” under Section 82015, and are subject to the Act’s contribution reporting requirements. The Act defines another type of payments, “behested payments” which involve an elected officer, but are distinguished from contributions.<sup>4</sup> There are no limitations for behested payments under the Act; however, payment(s) “made at the behest of” an elected officer totaling \$5,000 or more from a single source in a calendar year are subject to reporting requirements.<sup>5</sup> The purpose of the behested payment reporting requirements is to capture these payments in which the elected officer has a role in the transaction. For transparency and accountability purposes, behested payments reported by state elected officers are posted on the Commission’s website.

Pursuant to Section 82041.3, whether a payment is “made at the behest of,” is determined by the actions of the elected officer:

“Made at the behest of” means 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.

Regulation 18215.3 reiterates this definition, and provides safe harbor language stating that a payment is not made at the behest of an elected officer where the fundraising solicitation does not “feature” the elected officer.

Your request presents a situation where you are featured in the solicitation, as that term is defined in Regulation 18215.3(b), with your express prior consent. Therefore, payments under this circumstance will meet Section 82041.3’s definition of a payment “made at the behest of” the elected officer and are subject to the behested payment reporting requirements in Section 84224. Additionally, we note that the exception applicable to a roster or letterhead listing of an

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<sup>4</sup> Section 82004.5, “Behested Payment,” states in pertinent part:

“Behested payment” means a payment that is made at the behest of a committee, an elected officer, a member of the Public Utilities Commission, or an agent thereof, under any of the following circumstances:

...

(c) As to an elected officer, it is clear from the surrounding circumstances that the payment was made for purposes unrelated to the officer’s seeking or holding of elective office. ...

The following types of payments are presumed to be for purposes unrelated to an elected officer’s seeking or holding of elective office:

...

(4) A payment made principally for charitable purposes.

<sup>5</sup> Section 84224.

organization's governing body is not applicable to your scenario.<sup>6</sup> Expressly consenting to be listed in a ceremonial role, as an honoree or as a member of an honorary committee, in the fundraising solicitation satisfies the requirements of Regulation 18215.3(b)(1) and Section 82041.3. Any payments in response will be subject to the behested payment reporting requirements.

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

Sincerely,

Dave Bainbridge  
General Counsel

A handwritten signature in blue ink, appearing to read "L. Karen Harrison" followed by a stylized flourish or initials.

By: L. Karen Harrison  
Counsel, Legal Division

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<sup>6</sup> Regulation 18215.3(b)(2) states:

An elected officer or PUC member is also featured in a solicitation if the roster or letterhead listing the governing body contains a majority of elected officers (Section 82015(b)(2)(B)(iii)) or PUC members (Section 82015(b)(3)).

This provision recognizes that a mere letterhead or roster listing of the organization's governing body in a fundraising solicitation does not rise to the level of "featuring" the elected officer, except where the roster listing the governing body has a majority of elected officers. If the elected officer is otherwise featured in the solicitation, this exception is not applicable.