



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3050 • Sacramento, CA 95811
(916) 322-5660 • Fax (916) 322-0886

June 6, 2024

Jeffrey Nibert
7530 Hillsdale Dr
Pleasanton, CA 94588

Re: Your Request for Informal Assistance
Our File No. I-24-053

Dear Mr. Nibert:

This letter responds to your request for advice regarding the gift provisions of the Political Reform Act (the “Act”).¹ Because your request for advice relates to various potential donors and donations, rather than a specific donor and donation, we are treating your request as one for informal assistance.²

Also 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

How do the Act’s provisions relating to “gifts” apply in the context of donations you receive through a fundraiser aimed at paying for your dog’s medical procedure(s)?

CONCLUSION

In general, because the donations will confer a personal benefit without the exchange of equal consideration, a donation through the fundraiser will ordinarily be considered a “gift.” As such, you will be required to report donations of \$50 or more in a calendar year including the name and street address of the donor, may not accept anonymous donations \$50 or more from a single source, may not accept any donations greater than \$590 in a calendar year from a single source, and must recuse yourself from governmental decisions if it is reasonably foreseeable the decision will have a material financial effect on a source of gifts greater than \$590 within the 12 months preceding the governmental decision. However, some exceptions to these general gift provisions

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 18104 through 18998 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.

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

may apply, specifically with respect to donations received from family and other individuals with whom you have pre-existing relationships, as discussed in greater detail below.

FACTS AS PRESENTED BY REQUESTER

You are a member of the Pleasanton City Council. You and your wife have a 20-month-old dog that you recently adopted from a rescue organization. The dog's rear legs are disabled such that he is in a permanent crouch and can only waddle along, as he suffers from Lateral Patellar Luxation. You were advised by veterinary orthopedic surgeons that a dog like this can expect pain to manifest over the course of several years, including not only in the legs but also arthritis of the back.

You recently discovered that your dog's condition can be corrected with surgery. However, it is very expensive for you and your wife, as you are both retired and on fixed incomes. The estimate is a likely cost of \$20,000 or more for both legs to be corrected. You would like to raise funds for the surgeries and have mentioned GoFundMe.com ("GoFundMe") and Waggle.org ("Waggle") as possible sites for hosting a fundraiser. Waggle is a site specifically geared toward veterinary care, with donors' names remaining anonymous and payments sent directly to veterinary care providers.

You are seeking advice on what rules and exceptions regarding receiving and reporting gifts under the Act may apply to your situation.

ANALYSIS

General "Gift" Standards

Except where an exception applies, the Act defines a "gift" as:

[A]ny payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received and includes a rebate or discount in the price of anything of value unless the rebate or discount is made in the regular course of business to members of the public without regard to official status.

(Section 82028(a).)

Under the Act, payments to public officials that are "gifts" must be reported, are subject to limits, and may create a conflict of interest in a governmental decision financially affecting the gift giver. A gift must be reported if it is valued at \$50 or more from a single source in a calendar year. In reporting gifts, you must include the name and street address of each source of gifts aggregating to \$50 or more in value and a general description of the business activity, if any, of each source. (Section 87207.) The annual gift limit for 2024 is \$590. (Regulation 18940.2.) Thus, specified public officials, including any city councilmember, may not accept any gifts greater than \$590 from any single source in a calendar year. (See Sections 87200 and 89503.) Further, the Act prohibits any public official from making, participating in making, or using the official's position to influence the outcome of a governmental decision that would have a reasonably foreseeable material financial effect upon the donor of a gift or gifts with an aggregate value of \$590 or more provided to,

received by, or promised to the official within the 12 months prior to the date the decision is made. (Sections 87100, 87103(e); Regulations 18700, 18702.4.)

You are a public official and, through your fundraiser, would be receiving payments that confer a personal benefit without the exchange of equal consideration. As such, unless an exception applies, each donation you receive would constitute a “gift” under the Act. Consequently, you would be required to report the receipt of any gift(s) with an aggregate value of \$50 or more from an individual source in a calendar year. As you are required to report the name and street address of each reportable individual source, anonymous donations of \$50 or more may not be accepted. You would also be prohibited from accepting more than \$590 in gifts from an individual source in a calendar year. Finally, the Act would also generally prohibit you from taking part in governmental decisions that would have a reasonably foreseeable, material financial effect on any source from whom you have received more than \$590 in gifts within the 12 months preceding the governmental decision. As such, it is necessary that you obtain the identity of each donor so that you may either comply with these general requirements or accurately determine if an exception applies.

We note that you have identified several fundraising platforms on which you may seek donations. While we do not express an opinion on whether you may use any specific fundraising platform, we caution that you may use a platform only to the extent that the platform can be used consistently with the gift restrictions cited above. Accordingly, to the extent a platform cannot provide you with donor information for donations of \$50 or more, it would be impermissible to accept such donations raised through the platform for your benefit. Likewise, it would be impermissible to accept donations received by the platform for your benefit of greater than \$590 unless you have been provided with the donor information and can determine that an exception to the gift limit applies.

Potential “Gift” Exceptions

The Act contains numerous exceptions to this general definition. We highlight the exceptions potentially relevant to your circumstances here.

First, the definition of “gift” statutorily excludes payments received from an individual’s spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin or the spouse of any such person (as long as the family member is not acting as an intermediary for a non-family member). (Section 82028(b)(3); Regulation 18942(a)(3).)

Second, Regulation 18942(a)(18)(C) establishes an exception for “[a] payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official’s position with the agency, unless the individual providing the benefit to the official” falls into one of the following categories:

- (i) A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.
- (ii) A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months

- following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.
- (iii) A person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.

(Regulation 18942(a)(18)(D)(i)-(iii).)

Third, Regulation 18942(a)(19) excludes from the definition of “gift:”

Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official’s agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official’s position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.

Finally, we note that in your initial inquiry, you asked about the potential application of the “Acts of Neighborliness” exception under Regulation 18942(a)(17). That exception excludes from the definition of “gift”:

A service performed, such as a loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away, and other similar acts of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like participants under similar circumstances.

Here, the situation you are inquiring about is inconsistent with the language and intent of the “Acts of Neighborliness” exception. The “Acts of Neighborliness” exception expressly refers to “a service performed” by the donor, while the facts at issue here do not involve any service. Consequently, the exception is inapplicable here.

To the extent that the individuals who donate to your fundraiser are individuals with whom you have a familial or long-term personal relationship, one or more of the above exceptions may apply. In such instances, the donation would not qualify as a “gift” and the reporting requirement, annual gift limit, and conflict of interest provisions discussed above would not apply. However, the determination of whether an exception applies will require identifying the specific donor. If you need additional assistance determining whether an exception may apply after a potential donor has been identified, you should contact us for further advice. Again, however, we caution that unless such an exception applies, the receipt of a donation of \$50 or more would be a reportable gift, which would require reporting both the name and street address of the donor, and a donation greater than \$590 would be prohibited. Consequently, however you choose to raise funds for your pet’s


surgeries, you must collect information from the donor such that you can determine whether one of the exceptions applies or otherwise report the donation as a gift.

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

Sincerely,

Dave Bainbridge
General Counsel

By:



Kevin Cornwall
Senior Counsel, Legal Division

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