



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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November 29, 2022

Rachel Van Mullem
County Counsel
County of Santa Barbara
105 E. Anapamu St. Suite 201
Santa Barbara, CA 93101

Re: Your Request for Advice
Our File No. I-22-108

Dear Ms. Mullem:

This letter responds to your request for advice on behalf of Santa Barbara County Executive Officer (CEO) Mona Miyasato regarding the gift provisions of the Political Reform Act (the “Act”).¹

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090. 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. Because your inquiry is general in nature and does not pertain to a specific governmental decision, we are treating it as one for informal assistance.²

QUESTION

Are reimbursements for travel and per diem costs associated with an official’s duties as a board member of a 501(c)(3) nonprofit organization reportable income or gifts under the Act?

CONCLUSIONS

No. Reimbursement for travel expenses and per diem from a bona fide 501(c)(3) nonprofit organization are generally not considered reportable income or gifts under the Act. However,

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).)

payments other than travel payments and per diem including, but not limited to, any incidentals paid for by the organization can be analyzed only after the identification of the specific payment.

FACTS AS PRESENTED BY REQUESTER

Mona Miyasoto currently serves as Santa Barbara County (the County) CEO. She is considering accepting a volunteer position on the board of directors of a nonprofit organization. (the "Organization"). The Organization is a non-stock, non-profit organization exempt from taxation under Internal Revenue Code Section 501(c)(3), whose purpose is to help public sector employees with deferred compensation plans under Internal Revenue Code Section 457(b) (commonly referred to as "457s plans"). The Organization is based in Washington, D.C. and does not contract with the County. CEO Miyasoto would not receive compensation for her service on the board, but the Organization would reimburse her for her flights and accommodations to attend approximately four meetings per year, as well as other potential incidental expenses, such as local transportation and subsistence costs.

You now ask whether these reimbursements would be considered gifts under the Act, and whether CEO Miyasoto would need to report the travel payments on her Form 700 Statement of Economic Interests.

ANALYSIS

Payments for travel may constitute "income" or a gift to an official. "Income" includes any:

“[P]ayment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse.” (Section 82030(a).)

Section 82028 defines "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." Thus, where consideration of equal or greater value is received, the payment is not a gift.

So that the public is made aware of any potential influences from income and gifts, the Act requires certain officials, including "chief administrative officers of counties" and any other office listed in Section 87200 to report any source of income over \$500 and every gift valued at \$50 or more from a single source in a calendar year on the officials' Statements of Economic Interests (Form 700) (Section 87207.) The Act also prohibits any public official from making, participating in making, or using their position to influence the outcome of a governmental decision involving the source of income of \$500 or more or donor of gifts with an aggregate value of \$520 or more within 12 months of the decision. (Sections 87100 and 87103; Regulations 18700, 18702.3 and 18702.4.)

Lastly, the Act places limitations on the acceptance of gifts by certain public officials. The current gift limit is \$520 from a single source in a calendar year.³ (Section 89503; Regulation 18940.2.) This gift limit applies to all offices designated in Section 87200, including “chief administrative officers of counties” such as CEO Miyasoto.

However, notwithstanding the definition of income including gifts provided in Section 82030(a), Section 82030(b)(2) provides an exception stating that income does not include:

“Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.”

Under this exception, any payments for travel expenses and per diem received by CEO Miyasoto as the director of a Section 501(c)(3) nonprofit organization do not generally constitute income or gifts under Section 82030(a), would not be reportable as either income or gifts, would not result in disqualification from governmental decisions under the Act, and would not be subject to the gift limit.⁴ However, we caution that this exception is limited to typical travel expenses and per diem. We express no opinion regarding any other payment including any unidentified incidentally expenses. If CEO Miyamoto needs additional assistance determining the classification or permissibility of any payment not clearly for travel expenses or per diem, she should seek additional advice identifying the specific payment in question. If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel



By: Toren Lewis

Counsel, Legal Division

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³ Please note that the \$520 annual gift limit from a single source applies through December 31, 2022. Starting January 1, 2023, the annual gift limit will be adjusted to \$590.

⁴ We caution that this assistance is limited to the provision of the Act. For purposes of Section 1090, the payments to CEO Miyasoto may result in an interest in the nonprofit organization that potentially disqualify CEO Miyasoto from taking part in any decisions involving a contract with the organization. If there are further questions regarding the application of Section 1090 to any specific decision involving a potential contract with the nonprofit organization, CEO Miyasoto should seek additional advice.