

CITY OF OAKLAND



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December 4, 2006

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Michael Willcoxon
The DeSilva Group
11555 Dublin Blvd., Suite 201
Dublin, CA 94568

Re: Donations to Mayor's Inauguration

Dear Mr. Willcoxon:

You have asked whether donations to Oakland Moving Forward (the committee set up for the Mayoral inauguration) would implicate the Oakland Campaign Reform Ordinance ("OCRA"), particularly the political contribution bans for contractors doing business with the City of Oakland. (Oakland Municipal Code Section 3.12.140.) That law applies only to political "contributions." (Id. at 3.12.140(A).)

OCRA adopts the definitions of state law, including the definition of "contribution." (OMC 3.12.040.) The California Fair Political Practices Commission has said in an advice letter that donations to a U.S. Internal Revenue Code Section 501(c)(4) inaugural organizing organization, set up under the guidelines under the letter, are not "contributions." (Sutton Advice Letter, A-05-256 (January 11, 2005), copy attached.) Therefore the donations would not be "contributions" for the purposes of OCRA if Oakland Moving Forward is set up properly.

We offer no legal opinion regarding any perception of a conflict that may be generated if there is any public or media criticism of your donation. Also, you should contact the California Fair Political Practices Commission or your own attorney regarding application of any other state law.

Very truly yours,

John A. Russo
City Attorney

By: 
Mark T. Morodomi
Supervising Deputy City Attorney

MTM:ww
Cc: Daniel Purnell
Executive Director, Public Ethics Commission

CA FPPC Adv. A-05-256, 2005 WL 3693740 (Cal.Fair.Pol.Prac.Com.)

California Fair Political Practices Commission

***1** JAMES R. SUTTON
FPPC File No. A-05-256
January 11, 2005

James R. Sutton
The Sutton Law Firm
150 Post Street, Suite 405
San Francisco, CA 94108

Re: Your Request for Advice

Dear Mr. Sutton:

This letter is in response to your request for advice on behalf of Mayor Jerry Sanders regarding the campaign and gift provisions of the Political Reform Act (the "Act"). [FN1] Because elements of your question deal with past conduct, please note that the Commission will not advise with respect to past conduct. (Regulation 18329(b)(8)(A).) Therefore, nothing in this letter should be construed to evaluate any conduct that may have already taken place, and any conclusions contained herein apply only to prospective actions. [FN2]

QUESTIONS

1. Will the proposed organization, described below, qualify as a committee?
2. Will donations to or expenditures by the organization be considered contributions or gifts to Mayor Sanders?

CONCLUSIONS

1. As long as the organization limits its activities to those described in your letter, it will not qualify as a committee.
2. Neither donations to the organization, nor expenditures made by it, will be considered gifts to Mayor Sanders, under the circumstances you describe.

FACTS

A proposed nonprofit organization will be established in order to conduct certain activities in connection with the **inauguration** of San Diego Mayor Jerry Sanders. The proposed organization will be a nonprofit corporation organized under section 501(c)(4) of the Internal Revenue Code and section 23701(f) of the California Revenue & Taxation Code, created to promote the "social welfare" of the city by organizing receptions in connection with the **inauguration** of the new mayor and other activities related to the transition between mayoral administrations, and by relieving the city of the cost of conducting these activities. (Int. Rev. Code section 501(c)94) ["Social welfare organizations".] The organization would like to host a large, public reception following the State of the City address on January 12, 2006, in honor of the new mayor's **inauguration**, and pay for a small reception held in the mayor's office before his swearing-in ceremony on December 5, 2005. In addition the organization would like to pay transition expenses associated with the organization of the new administration, including office space, consulting fees, and press conference costs, which were incurred after the November 8, 2005, election and prior to the mayor's swearing-in on December 5, 2005. The proposed budget will be approximately \$35,000. The goal is for the city not to have to pay for any costs associated with the inaugural receptions or transition.

The 501(c)(4) organization will be operated to promote the "common good and general welfare" of the citizens of San Diego, and will not primarily benefit a private group of citizens. You state that the IRS has granted 501 (c)(4) status to organizations established to pay for inaugural and transition activities for state and local elected officials. (IRS Exemption Ruling, The Kincaid Inaugural

Foundation [Mayor of Birmingham, Alabama], July 24, 2001; IRS Exemption Ruling, Ventura/Schunk Inaugural and Transition Committee, Inc. [Minnesota Governor], April 19, 1999.) In addition, the organizations established to pay for the inaugural celebrations for Governors Schwarzenegger and Davis, and various other California state and local elected officials, were all 501(c)(4) organizations.

*2 It is intended that the organization have a board of directors to approve all donations and expenditures. Pursuant to regulation 18217, Mayor Sanders will not sit on the board, be substantially involved in the day-to-day operations of the organization, nor otherwise have control over the organization's activities; in addition, no member of the board of directors will be a family member or "agent" of the mayor, and the name of the organization - tentatively "San Diego Inaugural and Transition Committee" - will not include his name. The mayor's only involvement with the organization will be attending the receptions.

The organization will file federal and state tax returns disclosing all of its financial activities. It will also voluntarily limit donations to \$1,000 per person, and will voluntarily disclose its donors to the city clerk. The organization expects to be dissolved in less than six months, with any surplus funds going to San Diego-area charities.

ANALYSIS

The creation and operation of the organization in the manner you propose does not by itself determine whether or not it is formed and operated for political purposes and, therefore, regulated as a committee under the Act. Indeed, the formation of an organization on behalf of an elected official for the express purposes of accepting over \$1,000 in payments presumptively creates a committee under the Act, unless it is clear from the surrounding circumstances that the payments are not made for political purposes. (Sections 82013(a) and 82015.)

The issue turns then on whether the activities of the organization, as you describe them, constitute political purposes under the Act. As you are aware, there is no definition of "political purposes" in the Act itself. The Commission has defined the term by regulation. In regulation 18215, the term is defined as, among other things, a payment received or made at the behest of a controlled committee. Under regulation 18217, a nonprofit organization is deemed a candidate controlled committee if: (1) the candidate exercises significant influence over the organization; (2) the organization qualifies as a committee under the statutory definition; and (3) the organization operates for political purposes, as defined in subparagraph (a)(2)(A) of that regulation.

Under the facts you have submitted, the organization would not be a controlled committee of the mayor. However, please note that regulation 18217(d) provides that this presumption may be rebutted by clear and convincing evidence. As you are aware, the Commission does not operate as a finder of fact in providing advice under the Act. (In re Oglesby (1975) 1 FPPC Ops. 71.)

Section 82015(b)(2)(B)(iii) provides that if a payment is made at the behest of a candidate principally for legislative, governmental, or charitable purposes, it may not be considered a contribution or a gift [FN3] to the candidate. It states:

"A payment not covered by clause (i), made principally for legislative, governmental, or charitable purposes, in which case it is neither a gift nor a contribution. However, payments of this type that are made at the behest of a candidate who is an elected officer shall be reported within 30 days following the date on which the payment or payments equal or exceed five thousand dollars (\$5,000) in the aggregate from the same source in the same calendar year in which they are made. The report shall be filed by the elected officer with the elected officer's agency and shall be a public record subject to inspection and copying pursuant to the provisions of subdivision (a) of Section 81008. The report shall contain the following information: name of payor, address of payor, amount of the payment, date or dates the payment or payments were made, the name and address of the payee, a brief description of the goods or services provided or purchased, if any, and a description of the specific purpose or event for which the payment or payments were made. Once the five thousand dollars (\$5,000) aggregate threshold from a single source has been reached for a calendar year, all payments for the calendar year made by that source must be disclosed within 30 days after the date the threshold was reached or the payment was made, whichever occurs later. Within 30 days after receipt of the report, state agencies shall forward a copy of these reports to the Fair Political Practices Commission, and local agencies shall forward a copy of these reports to the officer with whom elected officers of that agency file their campaign statements."

*3 You state that the goal is for the City of San Diego not to have to pay for any costs associated with the inaugural events. It appears the payments would qualify under this section as having a

governmental purpose and would not be considered contributions or gifts to the mayor. If the total amount of benefits provided by the non-profit or the total amount from a single donor aggregates \$5,000 or more in a calendar year, a report of the payments is required as set forth in section 82015 (b)(2)(B)(iii). (Chiang Advice Letter, No. I-97-623; Taylor Advice Letter, No. A-03-085.) Since the payments would be limited to \$1,000 per person, the mayor will not be required to file the report mentioned above as to individual donors, but will be required to report the aggregate payments by the non-profit organization.

If you have any additional questions, please feel free to call me at (916) 322-5660.

Sincerely,

Luisa Menchaca
General Counsel

By: Kevin S. Moen, PhD
Political Reform Consultant II
Technical Assistance Division

FN1. Government Code sections 81000 - 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

FN2. In addition, nothing in this letter is intended to impact your request for advice from the San Diego City Attorney and San Diego Ethics Commission regarding the city's campaign or ethics laws.

FN3. Please note that gifts of admission to public officials and candidates for inaugural events are reportable and subject to gift limits. (Section 82028.) (Grindle Advice Letter, No. A-85-177; Bell Advice Letter, No. A-94-376; Jacobs Advice Letter, No. I-00-254.)
CA FPPC Adv. A-05-256, 2005 WL 3693740 (Cal.Fair.Pol.Prac.Com.)

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