



September 21, 2011

Chair Ann Ravel and Commissioners  
Fair Political Practices Commission  
428 J Street, Suite 800  
Sacramento, CA 95814

**RE: Agenda Items 54, 55, and 57**

Dear Chair Ravel and Commissioners:

On behalf of the League of California Cities City Attorneys Department FPPC Committee, I submit this letter for comment on the above-referenced agenda items. At the outset let me first express our appreciation for staff's outreach to the public and the regulated community on these items. It is our firm belief that Interested Person meetings and follow up discussions with commission staff go a long way toward producing a better work product for the commission to consider.

**Item 54: Regulation 18215.3; Behested Payment Reporting**

As explained in staff's memo, the Political Reform Act imposes an obligation to report certain contributions made for legislative, educational, or charitable purposes when the contributions are made at the behest of a public official. Over the years, agency staff has frequently been asked to provide guidance on whether the mere presence of an official's name on a mailing soliciting contributions to a charitable organization would be considered "behesting" contributions to the organization by the official. This new regulation proposes to codify staff's guidance that the mere presence of an official's name on a letter would not be considered solicitation by that official of contributions to the organization for the purposes of the "behested payment" rule.

In general, the Committee supports staff's proposed regulation. The "behested payment" provision in the Act is intended to address "pay to play" scenarios where public officials impose upon those with business before the official's agency to financially support the official's favorite causes. There is no disagreement that such conduct is unethical and should be proscribed. On the other hand, public officials frequently lend their name or volunteer their time to organizations that do good work in

their communities. It is also common for organizations soliciting contributions to list on their letterhead the names of the members of their boards or advisory boards to establish their credibility with the public. Oftentimes, these solicitation letters are sent without the knowledge or involvement of public official supporters. The proposed regulation would make clear that merely listing the names of public official supporters on the letterhead of a solicitation letter would not be considered behesting payments to the organization. In the opinion of the Committee the proposed regulation strikes an appropriate balance in the context of mailings soliciting contributions.

The Committee does suggest some minor changes to the placement and text of the new regulation. The proposed regulation has been numbered to be placed following the definition of "Contribution." (This is understandable because the behested payment reporting obligation is found buried in the text of Government Code Section 82015 defining the term "contribution.") However, we think people looking for the rules on behested payments are more likely to look in the vicinity of regulation 18225.7 which defines "Made at the Behest of." Placement of a new regulation 18225.8 may be preferable.

In addition, the proposed regulation defines what is not a behested payment, but contains no attempt to define what is. The Committee would suggest adding text that first defines what this term means [perhaps by reference to the text in 18225.7(a)] and then going on to define what would not be considered to be a behested payment. The Committee believes this would make the regulation easier to read, understand, and apply.

#### **Item 55: Regulation 18728.6; Reporting of Investments**

The Committee has considered the proposed amendments to this regulation and supports staff's recommendation. The options for investments have grown over the years since the statute defining the term was enacted. The staff's proposed regulation would enact a "criteria based" definition that would, if adopted, eliminate the need for statutory amendments as investment vehicles continue to evolve over time. Moreover, the Committee believes the criteria in the proposed regulation are appropriate and well stated.

#### **Item 57: Forms 804 and 805**

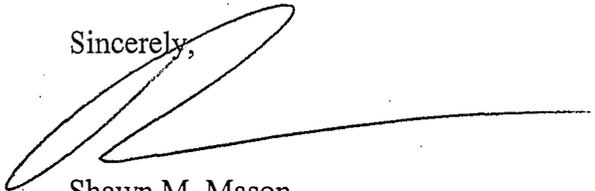
The Committee has considered the proposed forms for reporting new positions within an organization, and, in general, support approval by the commission. However, the Committee did have a concern with respect to the examples used to illustrate the listing of consultants in the proposed form 805.

In the view of the members of the Committee, neither of the consultants described in the first two examples in the draft form distributed with the original agenda would qualify as "consultants" who are subject to the disclosure requirements as defined in Regulation 18701(a)(2). It appears commission staff has addressed this concern by posting a revised form under the additional materials posted on the agenda. The Committee supports

adoption of the revised form, and thanks commission staff for their response to the Committee's concern.

I hope you find these comments helpful in your deliberations on these matters.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'S' followed by a horizontal line extending to the right.

Shawn M. Mason  
City Attorney  
City of San Mateo

cc: Zackery P. Morazzini, General Counsel