



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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March 28, 2025

Abel Salinas
Ethics Officer
Metropolitan Water District of Southern California
700 N. Alameda St. Los Angeles, CA 90012

Re: Your Request for Advice
Our File No. A-25-032

Dear Mr. Salinas:

This letter responds to your request for advice on behalf of Metropolitan Water District of Southern California (“Metropolitan”) Principal Project Controls Specialist John Matsumoto 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.

QUESTION

Does the donation of \$1,000 to a GoFundMe page established following Mr. Matsumoto’s loss of his family home in the Eaton Fire meet the “Act of Human Compassion” exemption from the definition of a “gift” where it was made by Ann Tardy, the founder of MentorLead, a Metropolitan contractor?

CONCLUSION

No. Ms. Tardy’s GoFundMe payment does not meet the Acts of Human Compassion requirements, as detailed below, and the payment is subject to the Act’s gift limit of \$630, reporting requirements and disqualification rules.

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.

FACTS AS PRESENTED BY REQUESTER

The Metropolitan is a regional wholesaler that delivers water to its 26 public member agencies – 14 cities, 11 municipal water districts, and one county water authority – which in turn provide water to 19 million people in Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura counties.

On January 15, 2025, a Metropolitan colleague established a GoFundMe page for Metropolitan employee John Matsumoto and his spouse who lost their home in the Eaton Fire. Mr. Matsumoto is a Principal Project Controls Specialist in Metropolitan's Engineering Service Group ("ESG"). To date, the donations appear to be from family members, colleagues, and friends.² However, one donation is from a Metropolitan contractor, Ms. Tardy of MentorLead, with whom Matsumoto has interacted professionally for the past few years.

Several years ago, Metropolitan's Human Resources Department ("HR") entered into an on-going contract with MentorLead. Through the contract with HR, Ann Tardy, Founder of MentorLead, assists ESG with its mentoring program, including acting as a special guest speaker at events associated with the program and presenting to mentors in the program. MentorLead also provides Metropolitan with the use of the proprietary Lifemoxie software platform.

This relationship developed as follows: for several years, ESG was manually administering an annual mentoring program. Recognizing the need for technological advancement, ESG aimed to increase efficiency by transitioning to a mentoring software program. The Human Resources Organizational and Training Department ("ODT") was actively involved in the ESG mentoring program and took the initiative to implement a mentoring program across Metropolitan. Considering this was categorized as a training expense, ODT evaluated several software vendors before ultimately selecting MentorLead. The contract with MentorLead was signed in July of 2019. The first year of the contract was considered the pilot, and the terms were a one-time setup fee of \$5,000, an enterprise roll-out fee of \$5,000, and a \$500 per month software licensing fee for one program. ESG and ODT were satisfied with the vendor and found the software easy to use, so it was decided to continue the software contract the following year.

The program then moved from the pilot fee structure to the current fee structure. In the second year, there was a one-time fee for \$5,000 and an increase to \$1,500 per month software licensing fee. The expansion of the mentoring program into other groups and/or agency wide has never come to fruition, so the fees have remained the same. The contract automatically renews annually, and Metropolitan has the right to cancel at any time with a 30-day notice. ESG surveys all participants at the end of each annual program. The mentoring program is currently on its 13th year, and ESG has consistently received positive feedback, with no reported complaints or negative feedback regarding the use of MentorLead software or the vendor owner, Ann Tardy. Given ODT's current staffing limitations, there are no plans to undergo a new contracting process at this time.

This is a very small contract and unlikely to go through the bid process. The contract is through the HR Training Department, and they are the decision makers. This program currently varies from 50 to 70 participants. One participant's review/opinion whether it was extremely

² No information was provided regarding other payments, and this advice solely addresses the Tardy payment.

positive or negative would not impact a contracting decision. Mr. Matsumoto was not involved in the MentorLead contract selection process. Mr. Matsumoto states that he does not have any involvement in making nor has he participated in making any decision regarding any contract with Mentor Lead. Metropolitan's HR Training Department states that Mr. Matsumoto is not involved in any way in determining whether to review the contract annually or whether the contract is renewed annually.

Mr. Matsumoto and Ann Tardy met through the ESG mentoring program. Mr. Matsumoto participated as a mentee in 2021 and subsequently became a mentor in the program. He has attended webinars twice monthly since joining the program. The vast majority of Mr. Matsumoto and Ann Tardy's interactions have been through the online mentoring program. Mr. Matsumoto has come to know Ann Tardy through this program in part because they share personal histories through mentorship meetings.

Mr. Matsumoto learned that Ann Tardy contributed \$1,000 to the Matsumotos' GoFundMe page. Upon learning of the donation, Mr. Matsumoto requested advice from our office on whether he must return the donation. The Ethics Office offered to facilitate a request for FPPC advice for a more definitive answer to this question.

Mr. Matsumoto is a Form 700 filer. His disclosure category is "10" and requires that he report "any investment, business position, and income (including gifts, loans, and travel payments) from sources that provide goods or services of the type used or procured by the designated position's department, office, division or area."

ANALYSIS

A. Gifts: General Rules.

A gift is defined under Section 82028(a) as:

any 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.

In an effort to reduce improper influences on public officials, the Act regulates the receipt of gifts by public officials in three ways. First, the Act places limitations on the acceptance of gifts by certain public officials. Pertinent to a designated employee, Section 89503(c) states:

A member of a state board or commission or designated employee of a state or local government agency shall not accept gifts from any single source in any calendar year with a total value of more than [\$630] if the member or employee

would be required to report the receipt of income or gifts from that source on the member's statement of economic interests.³

Second, so that the public is made aware of any potential influences from gifts, the Act imposes reporting obligations on a designated employee, requiring that any gift (or any gifts that aggregate to \$50 or more from the same source) received during the calendar year from a reportable source is disclosed on the designated employee's statements of economic interests. (Section 87302(b)).⁴

Third, the Act prohibits any public official from making, participating in making, or using their official position to influence the outcome of a governmental decision involving the donor of a gift or gifts with an aggregate value of \$630 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 and 87103(e).)

Additionally, we note that unless an exception to the gift definition applies, a payment received by the spouse of a public official will be treated as if it were a gift to the official under either of the following conditions:

- 1) There is no established working, social, or similar relationship between the donor and the family member that would suggest an association between the donor and the family member suitable or appropriate for making the type of payment provided to the family member; or
- 2) There is evidence to suggest the donor had a purpose to influence the official.⁵

(Regulation 18943(c).)

³ The gift limit is adjusted biennially to reflect changes in the Consumer Price Index. (Section 89503(f); Regulation 18940.2.)

⁴ Note that the name of any reportable source of a gift of \$50 or more must be reported. Thus, it is impermissible to accept anonymous donations of more than \$50.

⁵ Evidence to suggest the donor had a purpose to influence the official" includes circumstances where:

The payment is made to a family member of a state or local government agency official by a donor, or the donor's agent, if the donor is involved in an action or decision before the official's agency, in which the official will reasonably foreseeably participate or in an action or decision in which the official has participated within the last 12 months.

The payment is made to a family member by a person who has a contract with the official's agency or by a person who engages in a business that regularly seeks contracts with or comes before the agency for the purpose of receiving a license, permit, or other entitlement and the official may reasonably foreseeably make or participate in a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.), related to the person, or has participated in any decision related to the person within 12 months of the time the gift is made.

(Regulation 18943(c).)

As a Senior Project Controls Specialist in Metropolitan's Engineering Service Group (ESG), Mr. Matsumoto is subject to the Act's gift provisions. Ann Tardy is a reportable source of a gift, as her company provides mentor services with a software platform under contract that are used by Mr. Matsumoto's department, ESG. Because Ms. Tardy has no relationship to Mr. Matsumoto's spouse, the entire \$1,000 payment is attributable to Mr. Matsumoto. Therefore, absent an exception, the payment is a gift, subject to the \$630 limit.

B. Exceptions to the Gift Requirements: Payments that are Acts of Human Compassion

The Commission adopted an exception to the definition of "gift" and "income" where charitable assistance is provided by an individual to offset an official's medical or living expenses as an "Act of Human Compassion." (Regulation 18942(a)(18)(B).) Recognizing that the exception allows for unlimited, unreported payments by an individual to a public official, the exception is limited to particular circumstances and does not extend to gifts when there is any indication that the gift may be intended to influence officials in their official capacities. Moreover, it is a settled principle of statutory construction that we read exceptions to a general rule narrowly. (See *Dienhart* Advice Letter, No. A-07-083.) Regulation 18942(a)(18)(B) seeks to balance the need to not disadvantage a public official faced with catastrophic needs, while recognizing that the Act's main purpose is to protect public integrity by closely guarding against opportunities for financial influence by individuals in regard to an official with a role in past, current or future government decision-making related to the individual's interests.

Specifically, Regulation 18942(a)(18)(B) states that payments provided to an official, or an official's family member, by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity are neither gifts nor income. For the exception to apply, Regulation 18942(a)(18)(B) requires that the source of the donation must be either:

- An individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or
- The payment must be made without regard to official status under other circumstances in which it would be common to receive community outreach.

Additionally, the exception does not apply if the person making the payment is an impermissible source under the following circumstances:

(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.

(Regulation 18942(a)(18)(D).)

Regulation 18704 defines “making a decision” and “participating in a decision” as follows:

(a) Making a Decision. A public official makes a governmental decision if the official authorizes or directs any action, votes, appoints a person, obligates or commits the official's agency to any course of action, or enters into any contractual agreement on behalf of the official's agency.

(b) Participating in a Decision. A public official participates in a governmental decision if the official provides information, an opinion, or a recommendation for the purpose of affecting the decision without significant intervening substantive review.

Here, Mr. Matsumoto and his spouse lost their home in the recent Eaton Fire, an unexpected personal and community calamity. The facts indicate that Ms. Tardy, an independent contractor to Metropolitan, has had a work-related relationship with Mr. Matsumoto for over three years, since 2021, when he participated as a mentee in ESG’s mentoring program and later became a mentor in the program. In this relationship, they have shared personal histories in on-line mentorship meetings. However, Ms. Tardy and Mr. Matsumoto’s relationship was formed only after Metropolitan’s contract with Ms. Tardy’s company and their interactions, while personal in nature, resulted from the mentorship provided under the contract. As noted above, the Acts of Human Compassion exception must be interpreted narrowly especially considering the unlimited and undisclosed nature of payments it allows. Based upon these facts, and in the context of an independent contractor with an ongoing contractual relationship with the agency, it cannot be said that this payment is made due to a prior social relationship and without regard to Mr. Matsumoto’s status as a Metropolitan employee.

Furthermore, the Acts of Human Compassion exception does not apply where it is reasonably foreseeable that the person making the payment has or may reasonably foreseeably have a contract pending before the agency, as we have here, and there is a potential that the official may participate in the contract decision. The MentorLead contract renews annually and is up for renewal in the next few months. While the facts indicate that Mr. Matsumoto was not involved in the formation of the MentorLead contract, or the past renewals, it is reasonably foreseeable that Mr. Matsumoto, as a senior employee in the Metropolitan unit that utilizes the contract and long-time participant in the program, could participate in future decisions involving the contract renewal through his opinion or recommendation. Moreover, Ms. Tardy is a disclosable source of gift or income interest under his agency’s conflict of interest code. This demonstrates that Metropolitan has already determined the contractor is within the category of financial interests an employee in his position could foreseeably affect through his official duties. Therefore, Ms. Tardy’s GoFundMe payment does not meet the Acts of Human Compassion requirements, is subject to the Act’s gift limit of \$630, reporting requirements and disqualification rules.

If you have other questions on this matter, please contact me at KHarrison@fppc.ca.gov.

Sincerely,

Dave Bainbridge
General Counsel

L. Karen Harrison

By: L. Karen Harrison
Senior Counsel, Legal Division

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