

(Regulations of the Fair Political Practices Commission Title 2, Division 6, California Code of Regulations)

§ 18225. Expenditure.

(a) An expenditure is any monetary or nonmonetary payment made for political purposes.

A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Made by:

(A) A candidate, unless it is clear from surrounding circumstances that the payment was made for personal purposes unrelated to his or her candidacy or status as an office holder;

(B) A controlled committee;

(C) An official committee of a political party, including a state central committee, county central committee, assembly district committee or any subcommittee of such committee; or

(D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any membership organization, labor union or corporation.

(b) "Expenditure" includes any monetary or non-monetary payment made by any person, other than those persons or organizations described in subsection (a), that is used for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates, or the qualification, passage or defeat of a clearly identified ballot measure.

(1) "Clearly identified" has the following meaning:

(A) A candidate is clearly identified if the communication states his name, makes unambiguous reference to his office or status as a candidate, or unambiguously describes him in any manner.

(B) A group of candidates is clearly identified if the communication makes unambiguous reference to some well-defined characteristic of the group, even if the communication does not name each candidate. A communication that clearly identifies a group of candidates and expressly advocates their election or defeat is reportable as an expenditure, but the expenditure need not be allocated among all members of the class or group on the campaign statement reporting the expenditure.

(C) A measure that has qualified to be placed on the ballot is clearly identified if the communication states a proposition number, official title or popular name associated with the measure. In addition, the measure is clearly identified if the communication refers to the subject matter of the measure and either states that the measure is before the people for a vote or, taken as a whole and in context, unambiguously refers to the measure.

(D) A measure that has not qualified to be placed on the ballot is clearly identified if the communication refers to the subject matter of the measure and to the qualification drive.

(2) A communication “expressly advocates” the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure if it contains express words of advocacy such as “vote for,” “elect,” “support,” “cast your ballot,” “vote against,” “defeat,” “reject,” “sign petitions for” or, within 60 days prior to an election in which the candidate or measure appears on the ballot, the communication otherwise refers to a clearly identified candidate or measure so that the communication, taken as a whole, unambiguously urges a particular result in an election.

(A) Except for those communications paid for with public monies by a state or local government agency and subject to Regulation 18420.1, a communication, taken as a whole, unambiguously urges a particular result in an election if it is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure. A communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure when, taken as a whole, it could only be interpreted by a reasonable person as containing an appeal to vote for or against a specific candidate or measure because:

1. The electoral portion of the communication is unmistakable, unambiguous, and suggestive of only one meaning; and

2. Reasonable minds could not differ as to whether it encourages a vote for or against a clearly identified candidate or measure, or encourages some other kind of action on a legislative, executive or judicial matter or issue.

(B) The following non-exhaustive examples, referring to candidates or measures on the ballot in an upcoming election, illustrate statements that in most contexts would be “susceptible of no reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure:” “Smith's the One;” “No Measure A;” “Rally ‘round O'Malley;” “Create jobs with Measure X;” “Only Nancy Brown can clean out City Hall;” “Proposition 123 - your last chance to save California;” “Joe Green will earn your trust;” “Bob Boone is an unqualified, special-interest puppet;” “Shirley Hall - bad for California, bad for you.”

(C) The following non-exhaustive examples, referring to candidates or measures on the ballot in an upcoming election, illustrate statements that would be susceptible of a reasonable interpretation other than as an appeal to vote for or against a specific candidate or measure:

“Assemblymember Nancy Brown needs to be tough on criminals. Call her and tell her to stand firm on AB 100:” “Poor children need a home too. Support the Mayor's stance against more budget cuts:” “Thank you, Supervisor Smith, for continuing to support our farmers.”

(D) Safe Harbor. A communication does not “expressly advocate” the nomination, election or defeat of a candidate or the qualification, passage or defeat of a measure, within the meaning of this regulation, if:

1. It does not mention an election, candidacy, political party (unless required by law), opposing candidate, voting by the general public, and does not take a position on the character, qualifications or fitness for office of a candidate or officeholder, or the merits of a ballot measure, and;

2. it focuses on a legislative, executive or judicial matter or issue, either urging a candidate to take a particular position or action with respect to the matter or issue, or urging the public to adopt a particular position and to contact the candidate with respect to the matter or issue.

(E) Rules of Interpretation. If a communication does not qualify for the safe harbor defined above, the Commission shall consider whether the communication has an interpretation other than as an appeal to vote for or against a clearly identified candidate or measure, in order to determine whether, on balance, the communication is susceptible of no reasonable interpretation other than as an appeal to vote for or against a clearly identified candidate or measure.

(3) Reporting expenditures.

(A) The amount of an expenditure reportable pursuant to this subsection shall include all costs directly attributable to the communication, including but not limited to salaries, production, postage, space or time purchased, agency fees, printing and any additional administrative or

overhead costs attributable to the communication. The expenditure does not include any of the regular ongoing business overhead which will be incurred in similar amounts regardless of the communication.

(B) When printed or broadcast communications circulate outside the State of California, the expenditure may be calculated on the basis of the fraction of the total cost attributable to circulation within California.

(C) Costs directly traceable to the communication are reportable when the communication is made, or when payments are made in connection with the development, production or dissemination of the communication, whichever is earlier.

(D) The costs of printing and distributing petitions, recruiting, training and paying expenses of petition circulators, and other costs incurred in connection with qualification of a measure are reportable "expenditures."

(4) Notwithstanding the provisions of this subsection, the term expenditure does not include costs incurred for communications which expressly advocate the nomination, election or defeat of a clearly identified candidate or candidates or the qualification, passage or defeat of a clearly identified measure or measures by:

(A) Any broadcasting station (including a cable television operator, programmer or producer), website, or a regularly published newspaper, magazine or other periodical of general circulation, including any Internet or electronic publication, that routinely carries news and commentary of general interest, for the cost of covering or carrying a news story, commentary or editorial.

(B) A regularly published newsletter or regularly published periodical, other than those specified in paragraph (b)(4)(A), whose circulation is limited to an organization's members,

employees, shareholders, other affiliated individuals and those who request or purchase the publication. This paragraph applies only to the costs regularly incurred in publishing and distributing the newsletter or periodical. If additional costs are incurred because the newsletter or periodical is issued on other than its regular schedule, expanded in circulation, or substantially altered in style, size or format, the additional costs are expenditures.

(5) In addition, the term expenditure does not include uncompensated Internet activity by an individual supporting or opposing a candidate or measure as stated in Regulation 18215.2.

(c) Any payment used to make contributions, as defined in Section 82015 and Regulation 18215, is an expenditure.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82025, Government Code.

HISTORY

1. New section filed 4-30-76; effective thirtieth day thereafter (Register 76, No. 18).
2. Amendment of subsection (c)(3)(D) filed 5-22-78; effective thirtieth day thereafter (Register 78, No. 21).
3. Amendment filed 2-17-82; effective thirtieth day thereafter (Register 82, No. 8).
4. Editorial correction of subsection (b)(4)(C) filed 4-28-83 (Register 83, No. 18).
5. Amendment of subsection (a) filed 3-8-84; effective thirtieth day thereafter (Register 84, No. 10).
6. Amendment of subsection (b)(2), new subsections (b)(2)(A)-(E) and amendment of subsection (c) filed 11-15-2010; operative 12-15-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC

regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 47).

7. Repealer of subsections (b)(4)(A)-(C), new subsection (b)(4)(A), subsection relettering and new subsection (b)(5) filed 12-20-2010; operative 1-19-2011. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2010, No. 52).