

1 Amend 2 Cal. Code Regs. Section 18225.7 to read:

2 § 18225.7. **Made at the behest of; Independent versus Coordinated Expenditures.**

3 (a) Application.

4 (1) The term “made at the behest” is used in four contexts in the Act: (i) for
5 “contributions” and “expenditures” defined in Sections 82015 and 82025; (ii) for “independent
6 expenditures” defined in Sections 82031 and 85500, to differentiate between expenditures that
7 are made in coordination with a candidate or committee versus those that are made by a person
8 independent of the candidate or committee; (iii) for “behested payments” reports filed by an
9 elected officer or a Public Utilities Commissioner who solicits funds for charitable, legislative or
10 governmental purposes as specified in Section 82015(b)(2)(B); and (iv) for communications
11 identifying a state candidate as specified in Section 85310.

12 (2) The definition of “made at the behest” in subdivision (b) applies to all uses of that
13 term in the Act. The provisions in subdivisions (c)-(g) apply for coordinated expenditures. Refer
14 to Regulation 18215.3 for rules on reporting payments elected officers and Public Utilities
15 Commissioners solicit for charitable, legislative or governmental purposes.

16 (b) Made at the Behest. “Made at the behest” of² a candidate or committee means made
17 under the control or at the direction of, in cooperation, consultation, coordination, or concert
18 with, at the request or suggestion of, or with the express, prior consent of the candidate or
19 committee. Throughout this regulation, the terms “candidate” and “committee” include their
20 agents, when the agent is acting within the scope of his or her authority. ~~Such arrangement must~~
21 ~~occur prior to the making of a communication described in Government Code section 82031.~~

10/16/2015 (Updated Version showing changes from existing 18225.7)

1 ~~(b) Expenditures "made at the behest of" a candidate or committee include expenditures~~
2 ~~made by a person other than the candidate or committee, to fund a communication relating to one~~
3 ~~or more candidates or ballot measures "clearly identified" as defined at Title 2, California Code~~
4 ~~of Regs. section 18225(b)(1), which is created, produced or disseminated,~~

5 (c) Independent vs Coordinated Expenditures. For purposes of Sections 82031, 85500
6 and 85310, an expenditure is made at the behest of a candidate or committee, and is not
7 considered independent, if the expenditure funds a communication that is made under any of the
8 following circumstances:

9 (1) General Coordination. The expenditure is made at the request, suggestion, or
10 direction of, or in cooperation, arrangement, consultation, concert or coordination with, the
11 candidate or committee on whose behalf, or for whose benefit the expenditure is made. To be
12 considered coordinated, such prearrangement must occur prior to the making of a
13 communication.

14 (2) Involvement in Communication. The expenditure funds a communication that is
15 created, produced or disseminated either:

16 ~~(A)~~ (A) After the candidate or committee has made or participated in making any decision
17 regarding the content, timing, location, mode, intended audience, volume of distribution, or
18 frequency of ~~placement of~~ placing the communication; or

19 ~~(B)~~ (B) After discussion between ~~the~~ a creator, producer, or distributor of a
20 communication, or the person paying for that communication, and the candidate or committee,

1 regarding the content, timing, location, mode, intended audience, volume of distribution or
2 frequency of placement of placing that communication, ~~the result of which is agreement on any~~
3 ~~of these topics.~~

4 (d) Expenditures Presumed to be Coordinated/Made at the Behest. For purposes of
5 subdivision (c) of this regulation, there is a rebuttable presumption that an expenditure funding a
6 communication is made at the behest of a candidate or committee and not independent of the
7 candidate or committee on whose behalf, or for whose benefit, the expenditure is made, under
8 any of the following circumstances: An expenditure is presumed to be made at the behest of a
9 candidate or committee if it is:

10 (1) Campaign Needs. The expenditure is ~~Based~~ based on information about the
11 candidate's or committee's campaign needs or plans that the candidate or committee provided to
12 the expending person directly or indirectly, by the candidate or committee, such as information
13 concerning campaign messaging, planned expenditures or polling data. ~~or~~

14 (2) Agent. The expenditure is ~~Made~~ made by or through any agent of the candidate or
15 committee in the course of the agent's involvement in the current campaign, ~~or.~~ For purposes of
16 this regulation, the "current campaign" means (i) for a candidate, the period beginning 12 months
17 prior to the date of the primary or special election in which the candidate is on the ballot for an
18 elective office and ending on the date of the general or special runoff election for that office; or
19 (ii) for a measure, 12 months prior to the date of the election in which the measure is on the
20 ballot.

1 (3) ~~For a communication relating to a clearly identified candidate or ballot measure~~
2 ~~when:~~ (A) Common Consultants. The person making the expenditure for a communication
3 relating to a clearly identified candidate or ballot measure retains the services of a person who
4 provides either the candidate or the committee supporting or opposing the ballot measure with
5 professional services related to campaign or fundraising strategy for ~~that same election, or the~~
6 current campaign.

7 ~~(B)~~ (4) Republication. The communication relating to a clearly identified candidate or
8 ballot measure replicates, reproduces, republishes or disseminates, in whole or in substantial part,
9 a communication, including video footage, designed, produced, paid for or distributed by the
10 candidate or committee.

11 (5) Fundraising. The committee making the expenditure is primarily formed to support
12 the candidate or oppose their opponent and in the course of the current campaign, the candidate
13 who benefits from the expenditure solicits funds for or appears as a speaker at a fundraiser for
14 the committee making the expenditure, thereby participating in the committee's fundraising
15 strategy.

16 (6) Former Staff. The person making the expenditure is established, run, or staffed in a
17 leadership role, by an individual who previously worked in a senior position or advisory capacity
18 on the candidate's or officeholder's staff within the current campaign in which the expenditure is
19 made.

1 (7) Candidate's Family. The person making the expenditure is established, run, staffed in
2 a leadership role, or principally funded by an individual who is an immediate family member of
3 the candidate.

4 (e) Expenditures Not Considered Coordinated/Made at the Behest. An expenditure is
5 not considered to be coordinated or made at the behest of a candidate or
6 committee ~~merely when~~ based solely on any of the following circumstances:

7 (1) Interview. A person interviews a candidate on issues affecting the person making the
8 expenditure. ~~;~~

9 (2) Photograph or Press Release. The person making the expenditure has obtained a
10 photograph, biography, position paper, or press release, ~~or similar material~~ from the candidate or
11 the candidate's agents. ~~;~~

12 (3) Prior Contribution. The person making the expenditure has made a contribution to the
13 candidate or committee. ~~;~~

14 (4) General Request for Support. The person making the expenditure is responding to a
15 general, non-specific request for support by a candidate or committee, provided that there is no
16 discussion with the candidate or committee prior to the expenditure relating to details of the
17 expenditure. ~~;~~

18 (5) Meeting with Members or Employees. The person making the expenditures has
19 invited the candidate or committee to make an appearance before the person's members,

1 employees, shareholders, or the families thereof, provided that there is no discussion with the
2 candidate or committee prior to the expenditure relating to details of the expenditure. ~~or~~

3 (6) Informed after the Fact. A person informs a candidate or committee that the person
4 has made an expenditure, provided that there is no other exchange of information, not otherwise
5 available to the public, relating to details of the expenditure. ~~or~~

6 (7) Expenditure Benefits Another Candidate or Committee. An expenditure is made at the
7 request or suggestion of the candidate or committee for the benefit of another candidate or
8 committee.

9 (8) Hyperlink. The communication includes a hyperlink to the Internet website or other
10 social media page of a candidate or measure committee.

11 (f) Certain Committee Communications. Notwithstanding any other provision of
12 this ~~section~~ regulation, if two or more committees exchange information between or among
13 themselves, subsequent expenditures by each committee ~~shall~~ are not, merely by reason of that
14 exchange, ~~be~~ considered to be coordinated with or “made at the behest” of² the other
15 committee(s), where the committees are (i) all general purpose committees, (ii) all committees
16 primarily formed to support or oppose the same candidate or candidates, or (iii) all committees
17 primarily formed to support or oppose the same measure or measures.

18 (g) Coordinated Expenditures are Treated as Contributions. An expenditure that is made
19 at the behest of or in coordination with a candidate or committee, is considered a contribution to
20 the candidate or committee, unless it is otherwise exempted from the definition of “contribution”

1 by any provision of the Act or its regulations. ~~Throughout this section the terms “candidate” and~~
2 ~~“committee” include their agents, when the agent is acting within the course and scope of his or~~
3 ~~her agency. The term “expenditure” refers to a payment defined as an “expenditure” by~~
4 ~~Government Code section Section 82025 and Title 2, California Code of Regs.~~
5 ~~section Regulation 18225. A determination that an expenditure has been “made at the behest of”~~
6 ~~a candidate or committee does not establish that the expenditure is a “contribution” as defined by~~
7 ~~Government Code section 82015 or Title 2, California Code of Regs. section 18215. However,~~
8 ~~expenditures governed by Title 2, California Code of Regs. section 18550.1 may be treated as~~
9 ~~contributions pursuant to the provisions of that section.~~

10 Note: Authority cited: Section 83112, Government Code.

11 Reference: Sections 82015, 82025, 82031, 85310 and 85500, Government Code.