

# CONTRIBUTION RESTRICTIONS

Although the Political Reform Act is primarily a disclosure law, there are several important restrictions and prohibitions on receiving contributions. This chapter reviews these restrictions and prohibitions, as well as some that are contained in laws other than the Political Reform Act.

Ballot measure committees should also consult Elections Code Section 18680 for information relating to permissible expenditures, Section 18650 for use of petition signatures, and Section 18320 for use of websites and other restrictions.

For restrictions and prohibitions related to expenditures made with campaign funds, see Chapter 5.

## A. Restrictions on Contributions

### Reporting the True Donor

Failure to disclose the true source of a contribution is often referred to in media reports as campaign money laundering, which is a serious violation of the Act. The campaign reports, that list donors, are often the only means for the press and the public to determine who is supporting or opposing a ballot measure.

One type of common violation is when an entity reimburses individuals for contributions so that the committee receiving the contributions discloses the individuals rather than the true donor on campaign disclosure reports.

Another occurrence is when a person (organization, business, individual) makes a contribution to another person, with the condition, agreement or understanding that the payment will be subsequently used for political purposes, such as a contribution to another committee. It is a violation for persons to conceal their identities by contributing through another person.

#### Quick Tip

Concealing the true identify of a donor is a serious violation.

If it is discovered that a committee received a contribution and the donor and intermediary were not properly identified, the contribution must be paid to the Secretary of State for deposit in the State General Fund. A local agency may deposit laundered funds into its general fund when the action is brought under its local campaign finance law.

As noted in other chapters, if a contribution of \$100 or more is received from a single source in a calendar year, the source must be identified on the committee's Form 460. If a contribution is received through an intermediary, both the intermediary and the true source of the contribution must be identified.

Committee treasurers must check information that a person of reasonable prudence would question based on all available information. It is not possible to describe every situation that might trigger a duty for a treasurer to inquire if a contribution is identified correctly; however, some examples are a contribution's size from the reported source, the likelihood of that source making a contribution of the size reported, and the circumstances surrounding receipt of the funds.

## Cash Contributions

A committee may not accept a cash contribution of \$100 or more. Such a contribution may be returned to the contributor prior to the end of the reporting period, provided the cash was not previously deposited or spent.

A primarily formed ballot measure committee must return a contribution within 48 hours if the cash contribution is \$1,000 or more from a single source received during the 90 days prior to an election or on the date of the election.

A cash contribution, other than the instance described above, that is inadvertently deposited into the campaign bank account must be refunded within 72 hours of receipt.

**Ex 4.1** - A committee receives contributions of \$5,000 each from ten different individuals in the same week. The committee treasurer and campaign fundraiser did not make specific solicitations to the individuals. Upon the treasurer's request, the individuals state that they all work for the same employer. The committee treasurer has a duty to inquire to determine if the employer reimbursed the employees.

### Quick Tip

Even if change is immediately provided, a committee may not accept \$100 or more in cash from a single source. For example, if the committee is holding a fundraiser and charging \$50 per person, an attendee may not pay with a \$100 bill. The payment must be made by personal check, debit card, or credit card.

### Quick Tip

The FPPC website posts enforcement stipulations and warning letters.

## **Anonymous Contributions**

Anonymous contributions of \$100 or more are prohibited. If the committee receives a cash contribution of \$100 or more from an unknown source, it must be sent to the Secretary of State for deposit in the State General Fund.

## **Contributor's Legal Name**

Contributions must be made in the name by which the contributor is identified for legal purposes.

## **Commingling Funds**

Campaign funds may not be commingled with an individual's personal funds and may not be used for personal expenses. Campaign funds must be kept in an account separate from any account that contains personal funds.

## **Contributions Made by Money Orders/Cashier's Checks/ Traveler's Cheques**

All monetary contributions of \$100 or more must be made by written instrument (such as a check) containing the name of the donor and drawn from the account of the donor or the intermediary. Contributions of \$100 or more made by money order, cashier's check, or traveler's cheque are prohibited and must be returned to the contributor, or, if made anonymously, sent to the Secretary of State for deposit in the State General Fund.

Contributions may be received by credit card (including over the Internet), wire transfer, or other electronic means. (See Chapter 2.)

## Contributions Delivered in State Office Buildings

A contribution may not be delivered personally or through an agent, in the State Capitol or any other state office building for which the State of California pays the majority of the rent. “Personally delivered” includes the delivery of a copy or facsimile of a contribution, and the original or a copy of a contribution transmittal letter. This prohibition does not apply to contributions received or delivered in a legislative district office, or those sent by postal mail.

## Contribution Limits

Contributions to a state candidate controlled ballot measure committee from another state candidate controlled committee are subject to limits. Consult the FPPC contribution limits chart or FPPC Regulation 18535.

In addition, contribution limits may apply if a ballot measure committee, at the behest of a state candidate, makes a payment of \$50,000 or more for an ad about a measure that features the state candidate within 45 days of his or her election. (See Chapter 3.)

## Contributions From Foreign Governments or Principals

Committees are prohibited from soliciting or accepting contributions from a foreign government or foreign principal in connection with the qualification or support of, or opposition to, any state or local ballot measure. (52 U.S.C. Section 30118 and Government Code Section 85320 of the Act.)

For purposes of this prohibition, a “foreign principal” includes:

- A foreign partnership, association, corporation, or organization; or
- A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or
- A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is not a United States citizen or lawful permanent resident; or

- A foreign political party; or
- An individual outside the United States, unless the individual is a United States citizen; or
- A corporation outside of the United States, unless it is organized or created by the laws of the United States or any place subject to the jurisdiction of the United States, and its principal place of business is within the United States.

Contributions, expenditures, or independent expenditures made by a lawfully-admitted permanent resident of the United States are permitted.

## B. Public Funds and Public Resources

The Political Reform Act prohibits the payment of public moneys, in the form of matching funds or cash subsidiaries, for the financing of elections, except for elections in charter cities and counties. In addition, laws outside the Act prohibit the use of public resources, such as office equipment, staff time, etc., for campaign or personal purposes. (Education Code Section 7054; Gov. Code Section 8314; Penal Code Section 426.)

A state or local government agency is prohibited from using public resources to campaign for or against a ballot measure, though they may provide factual information. (*Vargas v. City of Salinas* (2009) 46 Cal. 4th 1, re-affirming *Stanson v. Mott* doctrine.) In addition, Government Code Section 54964 restricts an officer, employee, or consultant of a local agency from expending or authorizing the expenditure of any local agency funds to support or oppose a ballot measure or a candidate. For further information about laws outside the Act, contact the Attorney General's office at (800) 952-5225 or the local district attorney.

## Answering Your Question

### **May a school district contribute money or staff time to support a school bond measure?**

The Political Reform Act does not prohibit the use of public resources to support a school bond measure. However, California Government Code Sections 8314 and 54964, Penal Code Section 426, Education Code Section 7054, and *Vargas v. City of Salinas* (2009) 46 Cal.4th 1 may restrict the use of public funds and resources.

A school district that contributes money or staff time may become a “committee” and have reporting obligations. Public agencies should consult FPPC Regulations 18420 and 18420.1 for guidance on communications and other activity that would be considered a reportable campaign expenditure under the Political Reform Act. To determine if such payments are permitted, contact the Attorney General’s office.

## Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

### Government Code Sections

- 82025 Expenditure.
- 84300 Cash and In-Kind Contributions; Cash Expenditures.
- 84301 Contributions Made Under Legal Name.
- 84302 Contributions by Intermediary or Agent.
- 84304 Anonymous Contributions.
- 84307 Commingling with Personal Funds.
- 84309 Transmittal of Campaign Contributions in State Office Buildings.
- 84607 Prohibition Against Political or Campaign Use.
- 85320 Foreign Entities.
- 85300 Public Funds; Prohibition.
- 85305 Restrictions on Contributions by Candidates.
- 85704 Prohibition on Earmarking.

### Title 2 Regulations

- 18420 Reporting of Campaign Contributions and Expenditures of State or Local Government Agencies.
- 18420.1 Payments by State or Local Agencies for a Campaign Related Communication.
- 18432.5 Intermediary.
- 18439 Definition of "Personally Deliver."
- 18530 Use of Public Funds.
- 18535 Restrictions on Contributions Between State Candidates.