

BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:)	
)	No. O-99-047
Opinion requested by)	June 4, 1999
the California Republican)	
Party)	
_____)	

BY THE COMMISSION: The California Republican Party (CRP) has requested an opinion of the Fair Political Practices Commission on the following question:

I. Question.

If the CRP engages in the affinity credit card fundraising program described below, is there a contribution to the CRP, within the meaning of the Political Reform Act?¹

II. Conclusion.

No contribution to the CRP results under the affinity fundraising program described below because the CRP provides “full and adequate consideration” to the credit card issuer for the payments received from the issuer. Our conclusion assumes two conditions are met: First, the credit card issuer contracts with the CRP on standard terms, comparable to those offered to other affinity sponsors; second, the issuer’s correspondence to cardholders or prospective cardholders does not include political literature prepared by or on behalf of the CRP.

III. Facts.

The CRP is considering an “affinity” credit card fundraising program. The CRP would license its name and logo to a credit card issuer, which would issue a credit card bearing the CRP name and logo. The issuer would market the card to CRP members and supporters. The CRP also would provide its mailing lists, a free booth at CRP conventions, and advertising space in CRP publications as part of the arrangement.

In return, the credit card company would pay the CRP a “licensing fee” of \$1 to \$2 for each new account opened, plus 0.3 percent of each new customer’s monthly credit card bill. These fees would not be earmarked from the customer’s payments to the credit card company. There is nothing in the record before the Commission suggesting that these terms were arrived at by anything other than arms-length business negotiations between the CRP and the credit card issuer.

¹ Government Code sections 81000 - 91014.

On May 7, 1999, at a hearing on this matter, counsel for the CRP represented to the Commission that the terms offered by the credit card issuer to the CRP are standard in the credit card industry for affinity cards, and that the issuer would not include CRP political literature in its mailings to cardholders or prospective cardholders.

IV. Analysis.

Section 82015 of the Act defines "contribution" as "a payment ... except to the extent that full and adequate consideration is received" Based upon the facts presented to the Commission, we conclude that the fundraising program considered here does not result in a contribution to the CRP from the credit card issuer.² In return for the licensing fees it receives, the CRP provides "full and adequate consideration" to the issuer, pursuant to contractual terms standard in the credit industry for affinity card programs. This being so, we conclude that the statutory definition of contribution is not satisfied.³

In reaching this conclusion, we consider to be critical the representations made by the CRP that it is not receiving terms more favorable than those received by other affinity fundraising sponsors. The conclusion reached in this opinion depends on the correctness of that assertion of fact by the CRP.

Our conclusion also assumes that the issuer's correspondence to the cardholders does not include political literature prepared by or on behalf of the CRP. We thus are not presented with the question of whether the inclusion of CRP literature would constitute an "in-kind" contribution to the CRP.

In its written submissions to the Commission, the CRP suggests that the Commission create a "presumption" of full and adequate consideration in business transactions such as the one contemplated between the CRP and the issuer. We decline to create such a presumption. Whether a contribution results from a particular fundraising program depends on the facts of the particular case.

As the CRP readily acknowledges, all payments it receives as a result of the affinity credit card program must be disclosed as miscellaneous increases to cash, pursuant to section 84211 of the Act.

² Nor is there a contribution to the CRP from the credit card holder.

³ We are aware that the Federal Election Commission considers similar fundraising programs to result in contributions under the Federal Election Campaign Act. Our Act's definition of "contribution," however, contains an express exception for payments as to which "full and adequate consideration is received," while the federal statute contains no such exception.

Approved by the Commission on June 4, 1999. Concurring: Deaver, Getman,
Makel, and Scott.

A handwritten signature in cursive script, reading "Karen Getman", written over a horizontal line.

Karen A. Getman
Chairman