

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 • • • 1100 K STREET BUILDING, SACRAMENTO, 95814

Technical Assistance • • Administration • • Executive/Legal • • Enforcement • • Statements of Economic Interest
(916) 322-5662 322-5660 322-5901 322-6441 322-6444

March 25, 1985

Joan Mihay
3485 E. Bellaire Way
Fresno, CA 93726

Re: Your Request for Advice
Our File No. A-85-038

Dear Ms. Mihay:

Thank you for your letter requesting advice concerning the campaign reporting requirements of the Political Reform Act. This letter confirms the advice I gave you by telephone on March 1, 1985, regarding the reporting of a \$1,000 political contribution to the Friends of Karen Humphrey, a controlled committee, from the Fresno Firefighters Legislative Action Group.

If the cumulative amount of contributions received from a person or group of persons is \$100 or more, Government Code Section 84211 requires the candidate or committee which received the contribution to report, among other things, the amount of each contribution received from that person or group during the reporting period covered by the statement and the name and address of the person or group who made the contributions. In the situation you presented, the Friends of Karen Humphrey would be required to report the receipt of a \$1,000 contribution from the Fresno Firefighters Legislative Action Group. You have stated that when the individual members of the Fresno Firefighters Legislative Action Group made payments to the Group, they did not " earmark " the amounts they paid for the making of contributions to the Friends of Karen Humphrey. Therefore, the Friends of Karen Humphrey may not report the \$1,000 contribution as several smaller contributions from the individual members of the Fresno Firefighters Legislative Action Group. See 2 Cal. Adm. Code Section 18215.

If the \$1,000 from the Fresno Firefighters Legislative Action Group were received by the Friends of Karen Humphrey before the date of the election but after the closing date of

Joan Mihay
March 25, 1985
Page 2

the last campaign statement required to be filed before the election, the contribution would be a late contribution pursuant to Government Code Section 82036, and must be reported in accordance with the requirements of Government Code Section 84206.

My advice is limited to the interpretation of the Political Reform Act. This letter does not address any questions you have posed about the interpretation of the Fresno ordinance that limits campaign contributions. The interpretation and enforcement of the local ordinance are the responsibility of the City Attorney and the District Attorney. The constitutional arguments you have raised regarding the application of contribution limitations to pooled contributions do not affect the interpretation of the Political Reform Act because the Political Reform Act does not impose any contribution limitations.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:plh

Karen Humphrey

FOR CITY COUNCIL

FEB 13 1 42 PM '85

February 16, 1985

Fair Political Practices Commission
1100 K Street
Sacramento, California 95814

The enclosed memorandum was given to us by Fresno's City attorney to support his advice to us that a \$1,000 check from Fresno Firefighters Legislative Action Group was not in violation of the City's \$375 limit on campaign contributions.

We returned this check to the donors when we were advised by your staff that we would have to report this as one contribution over \$100 unless it was "earmarked" at the time of the contribution to the PAC.

If, subsequent to receiving this information from the City Attorney, we accept a replacement check for \$1,000 it would appear that we would have to treat it as a late contribution for your purposes.

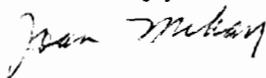
This creates a ridiculous situation where we would be reporting a late contribution of \$1,000 in an election where \$375 is the maximum we are allowed to receive.

We would appreciate written instructions from you in light of the enclosed Supreme Court case and its relevance to our situation.

Our election is March 5, 1985 and we would like to be able to accept this contribution which clearly reflects donations from individual firemen. Their covering letter stated "Each month our members voluntarily contribute an equal amount to our political action fund and our contributions are made as individual donations."

Please advise

Sincerely,



Friends of Karen Humphrey
Joan Mihay, Treasurer
(209) 229-7198

Encl.

Please reply to 3485 E. Bellaire Way, Fresno, CA 93726

March 26, 1979

MEMORANDUM

TO: The Council

RE: Fresno Bee Editorials

CAMPAIGN CONTRIBUTION LIMITATIONS

On March 3, 1979, the Bee decried what it called "fudging" on the city's municipal election campaign control ordinance. This ordinance, found in Chapter 2 of Article 22, of the Fresno Municipal Code, imposes a \$250 limit on the amount any "person" may contribute to any candidate with respect to a single municipal election. The conduct which offended the Bee occurred when the Valley Associated Contractors Political Action Committee (VALPAC) pooled several individual contributions (each under \$250) into one fund and then wrote \$1,000 checks to each of three Council candidates out of this fund (identifying in an attachment each individual donor and his prorata share). The Bee felt this action somehow gave the building industry more "clout" than it would have enjoyed if each builder had been forced to make his contribution with a separate check. The editorial concluded that "the Council should move to tighten up the law so as to make it impossible to string together individual donations into major gifts on behalf of special interests."

The city's municipal campaign control ordinance was patterned after the Federal Election Campaign Act of 1971. The federal act likewise restricts the amount of any "person" can contribute to any candidate with respect to a single campaign (\$1,000 for federal elections) and, like this city's ordinance, defined "person" to include an individual, association, organization, or corporation, or an officer or employee of any of the above.

The United States Supreme Court evaluated this federal regulation when forced with a lawsuit claiming that such limitations impair donor's constitutional rights by limiting their freedoms of speech and association. (Buckley v. Valeo, (1976) 424 U.S.1, 46 L.Ed.2d 659. The court first expressed

The Council
March 26, 1979
Page Two

grave concerns that "contribution restrictions could have a severe impact on political dialogue if the limitations prevented candidates from amassing the resources necessary for effective advocacy." (Buckley, supra, p. 21) The court also expressed a concern that individual contribution limitations impinge on the right of citizens to associate and coordinate their efforts for or against a candidate or cause. (Buckley, supra, p. 22) The court concluded that these constitutional infringements were permissible, however, inasmuch as the federal act specifically allows persons having a common interest to pool their individual (under \$1,000) donations into a fund which then could be used to support a single candidate or measure. With this proviso (or "loophole" as the Bee calls it), the court stated that the overall effect of the act's contribution ceiling is "merely to require candidates and political committees to raise funds from a greater number of persons...." Special interest groups are still free "to aggregate large sums of money to promote effective advocacy." (Buckley, supra, p. 22)

As so applied, the act lawfully prevents a wealthy individual from himself exerting undue financial influence on a given candidate, but nevertheless permits him to pool his limited contribution with similar donations from other like minded individuals in support of some common cause. Any campaign control regulation which did not provide for such pooling rights would, to borrow a phrase from the court, "exclude all citizens and groups except candidates, political parties, and the institutional press, from any significant use of the most effective modes of communication." (Buckley, supra, p. 19).

With respect to the recent municipal election, the Bee indicated that three candidates learned of VALPAC's intention to test the ordinance by making pooled contributions, and that these candidates "tried this out" on the City Attorney. Just the reverse is true. Mr. Reich, for instance, was so concerned about the propriety of the \$1,000 pooled contribution that he refused to accept it without an opinion from the City Attorney certifying its legality.

In any event, the Supreme Court decision cited above specifically validates the VALPAC pooled contributions and the acceptance thereof by the candidates in question. Further, the Federal Election Commission has rendered a formal written opinion (No. 1975-23) holding that pooled contributions are perfectly legal as long as the individual donors are clearly identified, no individual donor exceeds the limit on donations set forth in the act in question, and the pooled fund qualifies as a political committee. Indeed, the Federal Election Commission staff takes the position that

The Council
March 26, 1979
Page Three

any ordinance opposing limitations on contributions would have to be similiarly interpreted to permit such pooled contributions in light of the clear pronouncements of the Supreme Court in Buckley, supra. The denial of such a process to VALPAC (a registered campaign committee) could abrogate its constitutional rights as defined by the Supreme Court and could conceivably cause this city's entire ordinance to be declared invalid if tested.

The purpose of this memorandum, then, is two-fold. First, the Bee's desire to see the local ordinance amended to prohibit the "stringing together" of individual donations by a qualified and registered campaign committee such as VALPAC cannot be accommodated according the the United States Supreme Court and the Federal Elections Commission--at least so long as the committee reports all of its donations as required by the Political Reform Act of 1974, and no individual member thereof contributes more than \$250 to the committee as specified in this city's campaign control ordinance.

Second, it is hoped that a clear statement of the law will enable candidates to accept and report such contributions in future elections without being stigmatized by an adverse Bee editorial similar to the one published three days before the election just held.


JAMES A. MCKELVEY
City Attorney

JAM:rt