

Mr. Gross
December 29, 1986
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property. The Association has never made any prior contributions from membership dues.

The Association sponsors a political action committee. Money for the PAC is generated from special solicitations of the Association's members. The PAC is not funded with dues, nor does the Association pay the legal or administrative expenses of the PAC.

ANALYSIS

The Association would be required to file campaign statements disclosing the \$1,000 contribution if it is a "committee" within the meaning of the Act. (Section 82013.) Based upon the information you provided, the Association does not qualify as a committee.

The Association does not qualify as a recipient committee under the provisions of Section 82013(a). Section 82013(a) provides that a group is a "committee" if it receives contributions totaling \$500 or more in a calendar year. A "contribution" is defined to include any payment, unless it is clear from surrounding circumstances that it is not made for political purposes. (Section 82015.)

Since, at the time the dues payments were received from members, the Association had never previously made political contributions or expenditures from dues^{2/}, nor had it indicated plans to do so in the future, we must conclude that the dues payments were not made for political purposes. Thus, they were not contributions.

Now that the Association has made a political contribution from the dues payments, the members are deemed to be on notice that a portion of their dues may, in the future, be used for political purposes. If the Association makes a future contribution of \$500 or more, it will be required to

^{2/} No contributions or expenditures from dues had been made to the sponsored PAC or to any other candidate or committee.

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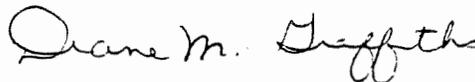
file campaign statements as a recipient committee.^{3/} Its reporting responsibilities may be satisfied through the campaign statements filed by the Association's sponsored PAC. (See Regulation 18419.)^{4/}

The Association does not qualify as an independent expenditure committee, under the provisions of Section 82013(b), because it did not make independent expenditures totaling \$500 or more. It also does not qualify as a major donor committee, under the provisions of Section 82013(c), because it did not make contributions totaling \$10,000 or more.

Under the circumstances you have described, the Association had no campaign reporting responsibilities regarding the \$1,000 contribution, including no responsibility to file a late contribution report.

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

Very truly yours,



Diane Griffiths
General Counsel

JSM:sf

^{3/} The Association will qualify as a recipient committee when it receives \$500 or more in contributions in a calendar year. (Section 82013(a).) If the Association receives \$500 or more in dues or other payments and knows or should know that the payments are intended for political purposes, it will be required to file campaign statements regardless of whether or not it has made contributions or expenditures. However, by the time \$500 in contributions have been made, it will be clear that at least \$500 in contributions have been received by the Association.

^{4/} If, in the past, the Association had divided its membership dues with the PAC, the members would be on notice that some portion of their dues would be used for political purposes. Under these circumstances, even if the \$1,000 contribution had been paid from the Association's share of the dues, rather than the PAC's, the Association would have reporting responsibilities as a recipient committee.

LAW OFFICES OF
NIELSEN, HODGSON, PARRINELLO & MUELLER

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SAN FRANCISCO

650 CALIFORNIA STREET, SUITE 2650
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 989-6800

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SACRAMENTO, CALIFORNIA 95814

TELEPHONE (916) 446-6752

F P P C
Nov 13 8 49 AM '86
FILE NUMBER

October 21, 1986

5087.01

HAND DELIVERED

Mr. Robert Leidigh
Chief, Legal Division
California Fair Political Practices
Commission
428 J Street, 8th Floor
Sacramento, California 95814

Re: Request For Advice Concerning Reporting
Obligations of Associations Making
Payment Disclosable Under the Political
Reform Act of 1974 ("the Act")

Dear Bob:

On behalf of our client, the California Association of Marriage and Family Therapists ("the Association"), we request clarification of oral advice provided by the Technical Assistance Division concerning the disclosure of certain payments made by the Association.

I. Facts

The Association recently made a \$1,000.00 contribution directly from Association funds to the principal committee opposing Proposition 64 on the November ballot. The Association has not previously made contributions from its Association account, which contains not only membership dues revenue but other revenue generated by the Association. The Association also sponsors a political action committee ("PAC") to which members contribute directly in order for the PAC to support candidates (not ballot measures) for statewide office. The Association has not paid the legal and administrative expenses of its sponsored PAC (2 Cal. Admin. Code § 18419).

As you are aware, PACs supporting candidates are automatically tax exempt under Internal Revenue Code § 527 and California Revenue and Taxation Code § 23701r. Both the IRS and FTB recognize the PAC as a legal entity separate and apart from the Association with its own tax filing obligations. The Association has established the PAC for the purpose of removing the Association from the candidate contribution process and to avoid

adverse tax consequences imposed on IRC § 501(c) organizations making contributions to candidates.

II. FPPC's Preliminary Advice

The Association inquired of the Technical Assistance Division what disclosure obligations were incurred by this contribution in opposition to Proposition 64. The Association was advised that it had two options: (1) It could consider itself a recipient committee (because of the contribution) and file a Form 410, Statement of Organization and appropriate Forms 420, Recipient Committee Statements or (2) it could disclose the payment on its sponsored PAC Form 420, notwithstanding the fact that the \$1,000.00 contribution did not go through the PAC account.

In subsequent conversations this office had with the Technical Assistance Division, we were informed that the rationale for this conclusion was that the Association had established a track record of making campaign contributions, and therefore had to disclose this contribution in one of the two methods above. Although we do not dispute that contributions by an Association to either a ballot measure effort or a candidate are reportable in certain situations, we do have some question about the alternatives for disclosure set forth by the Technical Assistance Division. (Please note that based on the FPPC advice, we have advised our client to report the contribution on its Form 420, pending further advice from the FPPC).

Because the Association made the decision to contribute from existing funds that were received for expenditures other than campaign contributions, it is our view that the Association should be treated as any other entity making contributions from funds not collected for the purposes of a campaign effort. The previous advice by the Commission has been to the effect that an entity such as a trade association does not become a recipient committee unless the association's members know or had reason to know that any portion of their dues would be used for political purposes (2 Cal. Admin Code § 18215). Thus, we have understood until now that the Association would not, under these circumstances, incur any disclosure responsibilities under the Political Reform Act until such time as it qualified as a Major Donor Committee under Government Code Section 82013(c). Had the funds been collected from members for the purpose of contributing to the Proposition 64 effort, we would agree with the Technical Assistance Division's advice. This is not the case, however. Since this association has never contributed to a candidate or committee out of its own funds, it would seem to us that it has not established a pattern of contributing that would make it a recipient committee.

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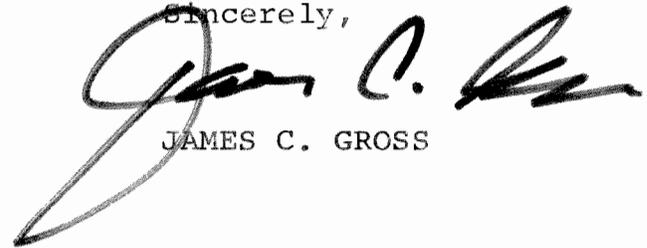
A separate legal issue is suggested by the second option given by the Technical Assistance Division. First, there is no question that the PAC is sponsored by the Association. There appears to be no other affiliation rule or joint reporting requirement for Association and PAC contribution activity, except under FPPC Reg. 18419, which does not apply in these circumstances.

III. Request For Advice

Because of the importance of this question to many of our clients, and the need to resolve the issue prior to the election, we would appreciate an expedited resolution of this issue. We also request that should you conclude that the advice provided by the Technical Assistance Division is correct, that you advise us as to when, if ever, an association would incur a major donor filing responsibility. Also please address whether under the circumstances described, an association or its PAC would be required to file a late contribution notice should a contribution of \$1,000.00 or more be made during the late contribution period.

If I can answer any questions to assist you in your response, please contact me.

Sincerely,



JAMES C. GROSS

JCG:ss
cc: Richard Leslie, Esq.
California Association of
Marriage and Family Therapists

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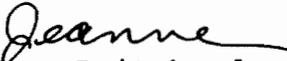
JAMES C. GROSS

JCG:ss
cc: Richard Leslie, Esq.
California Association of
Marriage and Family Therapists

Memorandum

To : Bob Leidigh

Date : 11/24/86


Jeanne Pritchard

From : FAIR POLITICAL PRACTICES COMMISSION

Subject: Additional information regarding request for advice from Jim Gross, on behalf of the California Association of Marriage and Family Therapists

I spoke with Jim Gross today, and he informed me of the following:

(1) The "other revenue" referred to in his letter dated October 21, 1986, consists of advertising revenue, interest received on bank accounts, revenue from the sale of association publications, and income received from the rental of office space.

(2) With regard to the source of funds contributed to the association's PAC, the funds do not come out of membership dues, and the members do not make PAC contributions at the time they make their membership dues payments. Contributions for the PAC are solicited separately, through the association's publications and other communications with members. Contributions to the PAC are made by separate check made out to the PAC.

Mr. Gross indicated that, although the facts he initially asked us to address in his request for advice do not apply to the Association of Marriage and Family Therapists, he hopes our response will also address the situation where a portion of dues payments is used for the PAC, because he has other clients which are associations that operate that way.

cc: Diane Griffiths
Kathy Donovan
John McLean

See footnote 3



California Fair Political Practices Commission

October 22, 1986

James C. Gross
Nielsen, Parrinello, Hodgson
& Mueller
1030 Fifteenth Street, Suite 250
Sacramento, CA 95814

Re: 86-295

Dear Mr. Gross:

Your letter requesting advice under the Political Reform Act was received on October 21, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days.

Very truly yours,


Robert E. Leidigh
Counsel, Legal Division

REL:plh