



California Fair Political Practices Commission

July 27, 1988

Dana W. Reed
Reed & Jones
3151 Airway Avenue, Suite M-1
Costa Mesa, California 95814

Re: Your Request for Advice
Our File No. I-88-213

Dear Mr. Reed:

You have written seeking advice regarding the campaign reporting provisions of the Political Reform Act (the "Act").^{1/} Because your letter does not provide the identity of the client on whose behalf you have requested advice, we treat your letter as one seeking informal assistance.^{2/}

QUESTION

If an individual makes \$9,500 in aggregate contributions to state and local candidates and \$1,000 contributions to each of two federal committees supporting separate congressional candidates in a calendar year, is the individual a "major donor" committee within the meaning of Section 82013(c)?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, *et seq.* All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/} Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSION

Under the circumstances described above, an individual would not be considered a "major donor" committee under Section 82013(c). Contributions to federal committees for congressional candidacies would not be cumulated with state and local contributions for purposes of determining whether the \$10,000 threshold in Section 82013(c) is met.

FACTS

Your client is an individual. He has contributed \$9,500 total in contributions in 1988 to state and local candidates. In addition, he has contributed \$1,000 to each of two federal committees. These committees were formed by local elected officials who each sought congressional office.

ANALYSIS

The Act requires certain persons who meet the definition of "committee" to file reports which disclose their identities and their political financial activities. (Section 84100, et seq.) Section 82013(c) defines the term "committee" to include a person who:

Makes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.

To determine whether an individual has contributed \$10,000 or more in a calendar year "to or at the behest of candidates or committees," we first look at the definition of "candidate." You have pointed out that Section 82007 defines candidate to ". . . not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971." The federal law has since been renumbered. We believe the renumbering is inconsequential.

Our long-standing advice has been that contributions made to federal candidates need not be cumulated with those made to state or local candidates or committees for purposes of Section 82013(c). We have so advised even in cases like this one where the federal candidate is currently holding state or local elected office. This letter confirms that advice.

This advice is limited to interpretation of Section 82013(c) and does not in any way address the subsidiary issue which you have raised regarding Orange County's TINCUP ordinance. You invited the Orange County District Attorney's Office to write to us on this subject. We have just recently received their letter. We agree with the District Attorney's Office that our advice under Section 82013(c) does not control interpretation of the TINCUP ordinance.

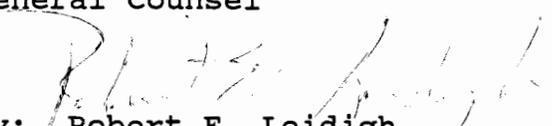
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The terms "contribution" and "candidate" must be examined in light of the purposes of the particular provision being interpreted. For example, Section 84308 of the Act, unlike Section 82013(c), applies its disqualification provisions to contributions to a state or local official, whether made in support of a state, local or federal candidacy. (Section 84308(a)(6).) Another example is Proposition 73's ban on transfers. The Commission may have to consider this issue in that context at a later date. (We express no views on that issue here.)

I trust that this letter has adequately responded to your request for advice regarding your client's duties or obligations with respect to "major donor" reporting. If you have questions regarding this issue, I may be reached at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Robert E. Leidigh
Counsel, Legal Division

DMG:REL:ld

Enclosure

REED & JONES

ATTORNEYS AT LAW

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THOMAS M. JONES

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TELEPHONE (213) 362-9238

June 2, 1988

John H. Larson, Chairman
Fair Political Practices Commission
Post Office Box 807
Sacramento, Ca. 95804

Dear Mr. Larson:

This letter is written pursuant to Government Code Section 83114 providing for the issuance of opinions and advice. It concerns filing obligations pursuant to the Political Reform Act of 1974, as amended.

FACTS

I represent an individual who has contributed or will contribute approximately \$9,500 to various state and local candidate campaigns and ballot measures during calendar year 1988. In addition, he has contributed \$1,000 to Dave Baker for Congress and \$1,000 to Friends of Harriet Wieder.

David Baker is a member of the City Council of the City of Irvine, California and is a candidate for the Republican nomination in the 40th Congressional District. Dave Baker for Congress is a federally registered committee organized and operated exclusively as the principal campaign committee of Mr. Baker's Congressional campaign.

Harriet Wieder is a member of the Orange County, California Board of Supervisors and is a candidate for the Republican nomination in the 42nd Congressional District. Friends of Harriet Wieder is a federally registered committee organized and operated exclusively as the principal campaign committee of Mrs. Wieder's congressional campaign.

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Are contributions to Dave Baker for Congress and/or Friends of Harriet Wieder "contributions" as that term is defined in Government Code Section 82015 and/or the regulations promulgated by your Commission? If the answer is "yes", the contributor would presumably be a "committee" pursuant to Government Code Section 82013(c) and would be required to file periodic reports with the Secretary of State and other filing officers. If the answer is "no" the contributor would not yet meet the \$10,000 threshold.

COMMENTS

I have long been under the impression that contributions to Federal Campaign Committees were not "contributions" pursuant to the Political Reform Act and were neither used in computing whether an individual was a "committee" pursuant to Government Code Section 82013(c) nor reported on form 461 by those who otherwise were Major Donor filers.

The basis for this impression was Government Code Section 82007 which states that the term "Candidate" does not include any person within the meaning of Section 301(b) of the Federal Election Campaign Act of 1971. As I am sure you are aware, Congress amended Section 301 of the FECA in 1980 so the Federal definition of the term "candidate" which previously appeared as 301(b) is now contained in section 301(2). Notwithstanding the error in Government Code Section 82007, the intent appears clear.

You should be aware that both the Orange County District Attorney and the Orange County Counsel have opined that contributions to Friends of Harriet Wieder are "contributions" under a local ordinance known as TINCUP. TINCUP, however, incorporates, by reference, the definitions of words and phrases as they are used in the Political Reform Act.

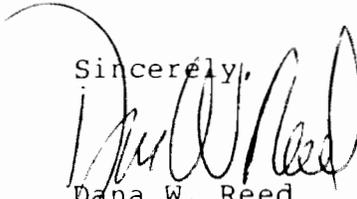
Accordingly, we believe that if contributions to Friends of Harriet Wieder are counted for Section 82013(c) purposes they would count for TINCUP purposes as well. Conversely, if Congressional, U.S. Senatorial and Presidential contributions are not covered by Section 82015 of the Political Reform Act, they would be inapplicable to TINCUP as well.

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Because of their interest in this matter, I have taken the liberty sending a copy of this request to both the Orange County District Attorney and the Orange County Counsel. It is possible that they might wish to file a memorandum of points and authorities with your office sustaining their opinions.

Sincerely,



Dana W. Reed

cc: Honorable Cecil Hicks
Attn: Maurice Evans, Esq.

Adrian Kyper, Esq.
Attn: Terry Andrus, Esq.

CECIL HICKS
DISTRICT ATTORNEY

OFFICE OF
DISTRICT ATTORNEY
COUNTY OF ORANGE

JAMES G. ENRIGHT MICHAEL R. CAPIZZI
CHIEF DEPUTY CHIEF ASSISTANT

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DIRECTOR, MUNICIPAL COURT OPERATIONS

EDGAR A. FREEMAN
DIRECTOR, SUPERIOR COURT OPERATIONS

MAURICE L. EVANS
DIRECTOR, SPECIAL OPERATIONS

LOREN W. DuCHESNE
CHIEF, BUREAU OF INVESTIGATION

WILLIAM J. MORISON
ADMINISTRATIVE MANAGER

July 14, 1988

John H. Larson, Chairman
Fair Political Practices Commission
Post Office Box 807
Sacramento, CA 95804

Dear Mr. Larson:

Our office has received a copy of a request by Attorney Dana Reed dated June 2, 1988, seeking an opinion or advice letter from your agency reference an interpretation of Government Code, sections 82007, 82013 and 82015. As you know, numerous ordinances throughout the state which control the activities of local elected officials incorporate the language of the Political Reform Act for definitions of words used in the local ordinances. Although the FPPC has no jurisdiction over these local ordinances, a decision by the FPPC interpreting a provision of the Political Reform Act may have broad impact throughout the state. Because of this potential impact on local ordinances, we are hopeful that the FPPC will guard against using broad language in its opinions and advice letters, which does not take into account the potential for mischief in local efforts to control potential undue political influence in the State of California. We are not suggesting that the FPPC attempt to become involved in the interpretation or enforcement of local ordinances.

Turning to the questions posed by Mr. Reed in his letter dated June 2, 1988, we see a need for caution by the FPPC in the choice of language used in any advice or opinion letter issued to Mr. Reed. There is no question in our minds that the Federal Election Campaign Act of 1971 preempts certain areas from state regulation. We suspect that the last sentence contained in Government Code, section 82007, is an acknowledgment of that preemption when it states that:

"Candidate" does not include any person within the meaning of section 301(b) of the Federal Election Campaign Act of 1971.

The FPPC may conclude that registration requirements in the Political Reform Act pertaining to committees are preempted by provisions of the Federal Election Campaign Act of 1971, when a local official runs for federal office. We have reached a similar conclusion in Orange County concerning registration requirements imposed by our local ordinance. However, it is our firmly held opinion that state and local jurisdictions are not preempted from the regulation and control of local elected officials in the performance of their duties at the state and local level. The danger, of course, occurs when a locally elected officials runs for federal office while he still holds the state or local position. In our judgment, there continues to exist a significant state and local interest in maintaining the integrity of the local political process, which Congress did not intend to interfere with.

Applying this principle to the Political Reform Act, there exists a serious danger in adopting the position that the entire Political Reform Act is preempted by the Federal Election Campaign Act when a California elected official runs for federal office. For

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John H. Larson, Chairman

example, in the context of the Political Reform Act, the controls governing contributions to officers of quasi-judicial bodies contained in Government Code, section 84308, would be preempted where the officer is running for federal elective office. This would apply not only to the prohibition against receipt of contributions (which probably would be preempted), but also the prohibition against making or influencing a decision involving a license, permit or other entitlement for use (which, in our judgment, is not preempted). Certainly, such a result would violate the express purpose of the Political Reform Act, and the intent of Congress in passage of the Federal Election Campaign Act. The impact would even be greater on the efforts of local bodies to control potential undue political influence.

There are several federal cases and advisory opinions of the Federal Elections Commission which have some bearing on this issue. Your agency may want to consider the following material:

Reeder v. Kansas City Board of Police Commissioners (1984) 733 F2d 543
Kvue, Inc. v. Austin Broadcasting Corp. (1983, Fifth Cir.) 709 F2d 922
11 CFR §108.7
Report No. 93-1239, 93 Cong. 2d Sess. 10-11, 1974
Report No. 93-1438, 93 Cong. 2d Sess. 69, 1974
FEC Advisory Opinion A01978-54
Federal Register, Vol. 41, No. 18, pages 3990-3991

Our review of the above material revealed some disagreement between the FEC and the federal courts on the subject of preemption. We agree with the statement concerning preemption and the Federal Election Campaign Act made by the Eight Circuit Court of Appeal in the Reeder case (supra) wherein the court concluded that Congress intended

to leave the states free, so far as any claim of preemption was concerned, to allow or forbid political activities, including contributions, by their own employees. (page 546)

Finally, we would like to note that the language contained in Government Code, section 82007, concerning the Federal Election Campaign Act apparently is found only within the that section of the Political Reform Act. As you know, it is a definitional section defining the term "candidate." Office holders are not included in this definition, unless certain specific conditions are met. In our view, the language should, therefore, be construed narrowly in order to effect the purpose of the Political Reform Act.

We would be happy to discuss this matter further with members of your staff.

Sincerely,



KENNETH O. CHINN
Deputy District Attorney

cc: Bob Leidigh

KOC:pqr
(86C-8357H)

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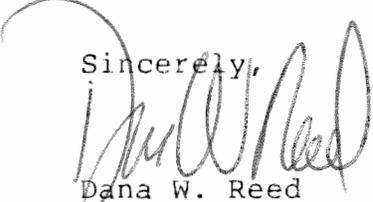
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Sincerely,



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cc: Honorable Cecil Hicks
Attn: Maurice Evans, Esq.

Adrian Kyper, Esq.
Attn: Terry Andrus, Esq.



California Fair Political Practices Commission

June 8, 1988

Dana W. Reed
Reed & Jones
3151 Airway Avenue, Suite M-1
Costa Mesa, CA 92626

Re: 88-213

Dear Ms. Reed:

Your letter requesting advice under the Political Reform Act was received on June 6, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Robert Leidigh, an attorney in the Legal Division, 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 if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh

REED & JONES

ATTORNEYS AT LAW

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THOMAS M. JONES

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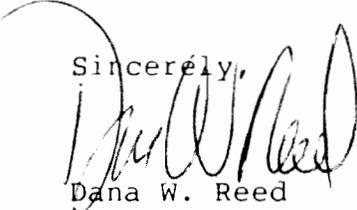
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