



California Fair Political Practices Commission

March 13, 1989

Marion Deatherage, Treasurer
Long Beach Area Republican Party
3200 E. 29th Street
Long Beach, CA 90806

Re: Your Request for Informal Assistance
Our File No. I-88-477

Dear Ms. Deatherage:

You have requested advice regarding the impact of Proposition 73^{1/} on the operations of the Long Beach Area Republican Party. Because your request is more of a general inquiry, we treat your request as one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

QUESTIONS

The Long Beach Area Republican Headquarters (LBARH) is involved in various activities serving the Republican community.

1. Do LBARH's activities constitute a contribution to candidates thus subjecting them to the contribution limits in Proposition 73? Are they subject to any limits?

2. LBARH's activities include addressing envelopes and registering voters for a fee. Are such fees considered a

^{1/} Proposition 73 was a statewide ballot measure adopted by the voters in the June 1988 primary election. The provisions of Proposition 73 amend the Political Reform Act (the "Act"), (copy enclosed) which is comprised of 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).)

contribution to LBARH for purposes of Proposition 73? Would the payment of such fees to LBARH raise contribution limitation problems for the candidate's controlled committee which pays the fees?

CONCLUSIONS

1. Depending on the circumstances, LBARH's activities may constitute contributions to candidates subject to the contribution limits in Proposition 73.

2. Fees received by LBARH for activities such as voter registration and stuffing envelopes are not contributions to LBARH if received in return for full and adequate consideration. The fees would be contributions to candidates if paid by a third party at the behest of candidates.

FACTS

LBARH is managed by three Assembly District Republican central committees. The office is staffed with one full time employee and two part time employees. It serves the Republican community with the following activities:

1. Conducts voter registration drives.
2. Assists the Republican get-out-the-vote drive, including recruiting volunteers, preparing walking kits for the targeted precincts and providing temporary satellite headquarters for election day.
3. Provides space for the California Republican Party to install a phone-bank operation. The phones are used to exhort voters to vote for Republican candidates.
4. Provides tables and space for Republican candidate literature.
5. Serves as a meeting place for volunteer Republican groups.
6. Serves as a general information center for Republicans in the area.

Funds for LBARH's operations come from:

1. Fundraisers such as dinners and barbecues with Republican candidates or officeholders as guest speakers.
2. Fees from voter registration activities.
3. Addressing, stuffing, stamping and mailing envelopes for campaign committees for a fee.

4. Ballot proposition recommendation mailings in the primary and general elections.

5. Miscellaneous donor contributions.

In a telephone conversation Ms. Shirley Jennings clarified that the fees received for voter registration and envelope addressing, stuffing, etc., are based on normal business agreements.

ANALYSIS

1. Limitations on LBARH's Activities

1. Section 82044 defines a payment as:

[A] payment, distribution, transfer, loan, advance, deposit, gift or other rendering of money, property, services or anything else of value, whether tangible or intangible.

LBARH's activities include get-out-the-vote-drives, preparation of walking kits for the targeted precincts, providing space for the phone bank operation and providing tables and space for Republican candidate literature. The rental value of the space provided for the phone bank operation and for the Republican candidate literature is the "rendering of [something] of value" to the Republican candidates and hence a payment to the candidates. (Section 82044.) In addition, the expenses of preparing the walking kits and other expenses associated with the get-out-the-vote drive constitute payments by LBARH to the candidates. (Id.)

Section 82025 defines "expenditure" as:

[A] payment, a forgiveness of a loan, a payment of a loan by a third party, . . . unless it is clear from the surrounding circumstances that it is not made for political purposes.

Section 82015 defines contributions as:

[A] payment . . . unless it is clear from the surrounding circumstances that it is not made for political purposes. An expenditure made at the behest of a candidate, committee or elected officer is a contribution to the candidate, committee or elected officer unless full and adequate consideration is received for making the expenditure.

Section 82031 defines "independent expenditure" as:

[A]n expenditure made by any person in connection with a communication which expressly advocates the election or defeat of a clearly identified candidate ... but which is not made at the behest of the affected candidate or committee.

Any payment made by LBARH in connection with a Republican candidate is an expenditure by LBARH. (Section 82025.) If the expenditure made by LBARH is made at the behest of the affected candidate or candidate's committee, the expenditure will be deemed a contribution. (Section 82015.) An expenditure is made at the behest of a candidate or candidate's controlled committee if it is made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, or at the request or suggestion of the candidate or candidate's controlled committee. (Regulation 18215(b).) If the expenditure is not a contribution, it is an independent expenditure. (Section 82031.)

Section 85301 places a \$1,000 limit per fiscal year on contributions by a person^{3/} to a candidate. Section 85302 places a \$2,500 limit per fiscal year on contributions by a person to a political committee^{4/}, broad based political committee^{5/}, or political party to make contributions to candidates for elective office. Section 85303 places a \$2,500 limit per fiscal year on contributions by political committees to a candidate for elective office and a \$5,000 limit per fiscal year on contributions by broad based political committees or political parties to a candidate for elective office.

If expenditures made by LBARH are contributions to candidates, then contributions it has received as well as contributions made by it are subject to the limitations in Proposition 73. However, if the expenditures made by LBARH are independent expenditures pursuant to Section 82031, then the limitations on contributions contained in Proposition 73 are not applicable.

^{3/} "Person" means an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, or labor organization.

^{4/} "Political committee" means a committee of persons which receives contributions from two or more persons, and acting in concert makes contributions to candidates.

^{5/} "Broad based political committee" means a committee of persons which has been in existence for more than six months, receives contributions from one hundred or more persons, and acting in concert makes contributions to five or more candidates.

2. Payments for Services Provided by LBARH

In our telephone conversation, Ms. Shirley Jennings stated that fees received by LBARH for voter registration and stuffing and addressing envelopes, etc., are based on normal business agreements with the candidate or candidate's committee. Regulation 18215 (copy enclosed) clarifies that contribution "includes any monetary or non-monetary payment for which full and adequate consideration is not made to the donor" Since the fees received by LBARH are based on normal business agreements, presumably in return for full and adequate consideration (i.e., in return for the services provided), the fees are not contributions to LBARH. Since the fees are not contributions, they do not raise contribution limitation problems for the candidate or the candidate's controlled committee which pays the fees.^{6/}

The answer to this question would change if a third party pays fees to LBARH at the behest of a candidate. In that case, the payment would be an in-kind contribution from the third party to the candidate. (Section 82015; Regulation 18215.) These circumstances would not affect LBARH's duties under the Act. However, the candidate at whose behest the payment is made must report the payment as a contribution and must ensure that the payment is within the applicable limits.

You also have inquired about the ability of LBARH to use funds possessed on January 1, 1989 to support or oppose a candidacy for elective office. Section 85306 of Proposition 73 permits the use of campaign funds possessed "on the effective date of this chapter . . . for any lawful purpose other than to support or oppose a candidacy for elective office."^{7/} (Section 85306, emphasis added.) Regulation 18536.1, adopted by the Commission in November 1988, permitted the use of some of the funds possessed on January 1, 1989 to support or oppose a candidacy for elective office. However, on February 8, 1989 the Los Angeles County Superior Court ruled that the regulation was invalid. Therefore, pending further action by the Commission, funds possessed on January 1, 1989, may not be used to support or oppose a candidacy for elective office. However, LBARH may use the funds on hand on

^{6/} The fees are Schedule G type earnings and should be reported on Schedule G with a brief description of the services provided in addition to the other information requested on Schedule G.

^{7/} Regulation 18536 defines "campaign funds possessed on the effective date of this chapter" as:

(1) All cash and cash equivalents possessed on June 8, 1988, and any other assets purchased thereafter with that cash or cash equivalents, and

(2) Any contributions, cash, cash equivalents, or other assets received or purchased from June 8, 1988, through December 31, 1988, the proceeds thereof, and the rents, issues and profits thereon.

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January 1, 1989 to support or oppose a ballot measure, for voter registration, or for non-partisan get-out-the-vote drives. (Regulation 18536.2, copy enclosed.)

I trust this letter provides you with the guidance you have requested. If you have any further questions, please call me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

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Enclosures



Long Beach Area Republican Party

December 14, 1988

Dec 19 4 23 PM '88

FPPC

Fair Political Practices Commission
428 J Street
Sacramento, Ca. 95814

Gentlemen:

Enclosed are FACTS, QUESTIONS and FINANCIAL INFORMATION concerning this organization as it relates to Proposition 73.

We would appreciate a written reply at your earliest convenience.

Very truly yours,

Marion Deatherage
Treasurer

Encl.

NAME: LONG BEACH AREA REPUBLICAN HEADQUARTERS
SECRETARY OF STATE I.D. #745094
FEDERAL #953101663
STATE EMPLOYMENT #80131642

FACTS:

The Long Beach Area Republican Headquarters, which has been in existence for over 30 years, is a year round organization managed by three Assembly District Republican Central Committees. The office is staffed primarily with volunteers, with one full time employee and two part time employees. It serves the Republican community with the following activities:

1. Conducts registration drives in malls, shopping centers, and door to door precinct walks.
2. Works with the Republican State Party and L. A. County Republican Headquarters in the general election with a major get out the vote effort, including recruitment of volunteers to walk priority precincts in the three different assembly districts (this also includes preparation of walking "kits" for these precincts and provision of temporary "satellite" headquarters for election day.)
3. Provides the space for the California Republican Party to install a major L. A. County phone bank operation.
4. Provides tables and space for Republican candidate literature in primary and general elections.
5. Serves as a meeting place for volunteer Republican groups such as the Federation of Republican Women and the Young Republicans.
6. Serves as a general information center for Republicans in the area, i.e., registration, referrals to volunteer Republican groups, names and addresses of legislators, etc.

Funds for the operation of this headquarters come from:

1. Fundraisers such as dinners or barbecues with Republican candidates and/or officeholders as guest speakers.
2. Bounty from voter registration.
3. Addressing, stuffing, stamping and mailing envelopes for campaign committees for a fee.
4. Ballot proposition recommendation mailings in the primary and general elections.
5. Miscellaneous donor contributors (those who contribute from \$500/year to \$25/year on a regular basis).

QUESTION 1. If after 1/1/89 this organization continues to operate as described by the facts recited above, will it be considered as possessing campaign funds to support or oppose a candidacy and thus be subject to the Proposition 73 contribution limitations? Will it be subject to no contribution limitations at all?

QUESTION 2. The fundraising activities of this organization include the addressing of envelopes for campaign committees for a fee and the receiving of a fee for voter registration. If the answer to question 1 above is that this organization is subject to Proposition 73 contribution limitations would these fees be considered as a contribution subject to the limitations? If this organization is not subject to the contribution limitations, would candidate committees have a contribution limitation problem in payment of these fees?

QUESTION 3. If it is necessary for this organization to 'cleanse' its cash in bank at 1/1/89, would the fees described in question 2 above be considered as contributions subject to the limitations or as Schedule G type of earnings not subject to the limitations?

FINANCIAL INFORMATION

1-1-86 thru 12-31-86

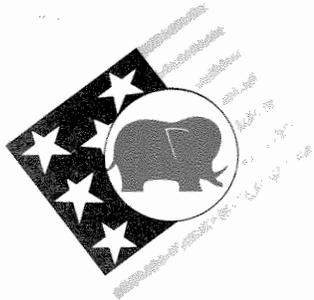
INCOME:

Fundraisers	\$ 12,514.00
Bounty	293.00
Campaign Committee Mailing	12,973.60
Ballot Prop. Mailing	4,732.00
Misc. Donations	8,350.47
Interest Income	637.28
	<hr/>
	\$ 39,500.35

EXPENSES:

Rent	4,301.00
Telephone	3,501.37
Utilities	1,260.05
Office Expense	1,651.98
Unemployment Ins.	70.00
Wages	17,795.72
Computer	4,346.65
Corp. Inc. Txs on interest	165.24
Repairs & Maintenance	517.55
Cost of Ballot Recs.	2,150.13
Cost of Fundraisers	8,590.14
Insurance	300.00
Furniture & Equipment	264.90
Men's Forum Exp.	537.30
YR Loan	500.00
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	\$ 45,952.03

Beginning Cash on Hand 1/1/86	\$ 17,608.63
Income - 1986	\$ 39,500.35
Expenses - 1986	\$(45,952.03)
End Cash on Hand 12/31/86	\$ 11,156.95



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