



California Fair Political Practices Commission

July 27, 1989

John S. Eldred
Keller and Heckman
1150 17th Street, N.W.
Suite 1000
Washington, D.C. 20036

Re: Your Request for Advice
Our File No. A-89-038

Dear Mr. Eldred:

This is in response to your request for advice concerning application of the California Political Reform Act (the "Act")^{1/} to the establishment of a California political action committee by your client, The Society of Plastics Industry, Inc. (the "Society").

As I indicated to you on the telephone, the uncertainty generated by extensive amendments to the Act that were operative on January 1, 1989 has made it difficult for the Commission staff to provide a prompt answer to your request. Although many of these uncertainties remain, we recognize your client's need for guidance at this time. Please note that if your client acts in reliance upon this letter, it will be immune from later charges that it violated the Act's provisions. However, the Commission may be considering adoption of regulations in the near future that could alter the advice given in this letter. Therefore, please be aware that the immunity provided by this letter is only good unless and until the Commission adopts regulations that alter this advice.

^{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.

QUESTION

Do the campaign contribution limits of the Act apply to the cost of in-kind organizational services supplied by the Society to its newly formed political action committee in California?

CONCLUSION

The Act's campaign contribution limits do not apply to the cost of in-kind organizational services supplied by the Society to its newly formed political action committee in California.

FACTS

The Society is a trade organization of 2,000 members representing all segments of the plastics industry in the United States. Its operating units and committees are composed of resin manufacturers, distributors, machinery manufacturers, plastics processors, moldmakers, and other industry-related companies and individuals. The Society is the major national trade association of the plastics industry.

The Society intends to establish a political action committee in California and wishes to provide organizational services for the committee. Specifically, the Society wishes to provide the following consulting, legal and accounting services.

A. Consulting Services:

1. Advice and consultation on all phases of the committee's development and management, including:
 - ° Development of a fundraising and communications plan with an implementation timetable for all committee activities in 1989;
 - ° Meetings, telephone consultations and conferences between the committee and the Society's government affairs staff;
 - ° Assistance in writing direct mail communications that may be sent to all potential contributors; and
 - ° Assistance in developing ideas and concepts for newsletter articles.
2. Assistance in the development of a California political action committee solicitation brochure and contribution card.

3. Assistance in the development of a political action committee Trustees' Fundraising Kit to provide instructions and resources for targeting personal solicitations, as well as provide a sample presentation about the committee for use in various industry forums.
4. Assistance in the development and presentation of an orientation and training session at the committee's trustees' organizational meeting. This session would be designed to acquaint the trustees with the committee's purpose, goals, and program; to explain their role as trustees; and to provide instruction as to their solicitation responsibilities.
5. Assistance in the development of a fundraising event.
6. Assistance in the development of an audio cassette tape for distribution to all potential contributors.

B. Legal Services:

All research, analysis and consultation necessary to provide advice concerning applicable California law and to organize and operate the committee in compliance with the law.

C. Accounting Services:

The services of a certified public accountant, designated as treasurer of the committee, who will ensure that sound accounting principles and practices are followed and who would prepare all necessary reports on the committee's financial condition and operations.

The Society plans to provide these services only to the extent that they are necessary for the commencement of committee activities, i.e. overhead organizational services. An accounting will be made of the cost of services supplied and this amount eventually will be repaid to the Society by funds raised from other sources by the committee.

ANALYSIS

Section 85302 prohibits contributions to political committees^{2/} and broad based political committees^{3/} in excess of \$2,500 in any fiscal year^{4/} if the contributions are for these committees' use in making contributions to candidates.

The question presented is whether the cost of the various in-kind organizational services that the Society intends to provide to its California political action committee are contributions that are subject to the \$2,500 limit of Section 85302.

Initially, we assume for the purposes of this analysis that, in giving moneys to the Society, its members know the moneys are to be used for political purposes and, thus, are contributions to the Society. (Section 82015; see also Gross Advice Letter No. A-86-295, copy enclosed.) On this basis, the Society is either a political committee or broad based political committee and, as discussed above, is subject to the contribution limits of the Act.

We next analyze whether the services provided by the Society would be "contributions" to the political action committee under the Act.

Regulation 18215 defines "contribution," in pertinent part, as follows:

(a) A contribution is any monetary or nonmonetary payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

. . .

^{2/} Section 85102(c) defines "political committee" as "a committee of persons who receive contributions from two or more persons and acting in concert makes contributions to candidates."

^{3/} Section 85102(d) defines "broad based political committee" as "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."

^{4/} July 1 through June 30. (Section 85102(a).)

(2) Received by or made at the behest
of:

. . .

(D) An organization formed or existing primarily for political purposes.... (Emphasis added.)

Based upon the facts provided, it is clear that the political action committee will be formed primarily for political purposes and the Society, by providing in-kind organizational services, is making a nonmonetary payment to the committee. Your letter states that the Society expects the committee to repay the value of these services. Whether the services are an outright gift to the committee, or a type of loan, they would be contributions to the committee. (Sections 82015 and 82044.)

We next analyze whether the contributions are subject to the limits of Section 85302.

As previously stated, Section 85302 prohibits contributions to political committees or broad based political committees in excess of \$2,500 in any fiscal year, but applies only if the contributions are for the committee's use in making contributions to candidates.

Section 85303(c) reinforces this exception by stating:

Nothing ... shall limit a person's^{5/} ability to provide financial or other support to one or more political committees or broad based political committees provided the support is used for purposes other than making contributions directly to candidates for elective office.

(Emphasis added.)

The Commission has not yet defined by regulation the meaning of the phrase "purposes other than making contributions directly

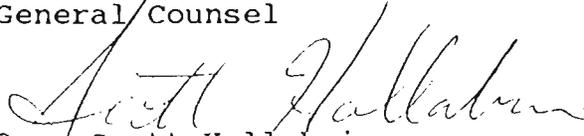
^{5/} Section 85102(b) includes corporations and associations in the definition of "person." It appears, therefore, that the Society would be considered a person for purposes of the Act's contribution limits.

to candidates for elective office."^{6/} However, by inclusion of Section 85303(c) in the Act, it is clear that the drafters meant to exempt some contributions to political committees and broad based political committees from the Act's contribution limits. The Commission staff believes that the in-kind organizational services to be provided by the Society fall within this exemption. These services essentially cover a portion of the committee's overhead and administrative costs and are not something that can be contributed to candidates.

Therefore, the services provided by the Society to its political action committee would be exempted from the contribution limits under Section 85303(c).

I hope that this letter has been of assistance. If you have any questions, please telephone me at (916) 322-5901.

Kathryn E. Donovan
General Counsel


By: Scott Hallabrin
Counsel, Legal Division

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Enclosures

^{6/} Commission staff intends to present this issue to the Commission for its consideration at a Commission meeting in August or September.

FPPC

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January 13, 1989

*ADMITTED IN VIRGINIA ONLY
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Mr. Bruce W. Robeck
Political Reform Consultant
Technical Assistance and Analysis Division
Fair Political Practices Commission
428 J Street, Suite 800
Post Office Box 807
Sacramento, California 95804

Re: Classification of Contributions
Used For Consulting, Legal and
Accounting Services

Dear Mr. Robeck:

We appreciate the advice that you gave Chamie Grandy on December 29, 1988 and the informative materials you sent to us regarding (1) the \$2,500 ceiling on contributions or loans made during the fiscal year by an individual to a political action committee ("PAC") to aid candidates for elective office; and (2) the current policy of the Fair Political Practices Commission ("the Commission") concerning overhead expenses of PACs.

As we understand it, neither the Political Reform Act of 1974 as amended to January 1, 1989 ("the Act") nor any applicable regulations define "overhead" at this time, but the Commission is willing to receive and review letters that detail contributions and loans to committees and determine whether the contribution or loan is for an overhead expense that would not be subject to the \$2,500 limitation. Accordingly, this letter describes certain in-kind services to be provided via a loan to a PAC by our client, and requests your determination that these matters may be lawfully undertaken without being subject to the \$2,500 limitation.

Mr. Bruce W. Robeck
January 13, 1989
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Facts

Our client, The Society of the Plastics Industry, Inc. ("SPI"), ^{1/} intends to establish a PAC in California and wishes to provide organizational services for the PAC. Specifically, SPI wishes to provide the following consulting, legal and accounting services.

A. Consulting Services:

1. Advice and consultation on all phases of the PAC's development and management, including:
 - Development of a fundraising and communications plan with an implementation timetable for all PAC activities in 1989;
 - Meetings, telephone consultations and conferences between the firm and SPI government affairs staff;
 - Assistance in writing direct mail communications that may be sent to all potential contributors; and
 - Assistance in developing ideas and concepts for newsletter articles.
2. Assistance in the development of a California PAC solicitation brochure and contribution card.
3. Assistance in the development of a PAC Trustees' Fundraising Kit to provide instructions and resources for targeting personal solicitations, as well as

^{1/} SPI is a trade organization of 2000 members representing all segments of the plastics industry in the United States. SPI's operating units and committees are composed of resin manufacturers, distributors, machinery manufacturers, plastic processors, moldmakers, and other industry-related companies and individuals. SPI is the major national trade association of the plastics industry.

Mr. Bruce W. Robeck
January 13, 1989
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provide a sample presentation about the PAC for use in various industry forums.

4. Assistance in the development and presentation of an orientation and training session at the PAC trustees' organizational meeting. This session would be designed to acquaint the trustees with the PAC's purpose, goals, and program; to explain their role as trustees; and to provide instruction as to their solicitation responsibilities.
5. Assistance in the development of a fundraising event.
6. Assistance in the development of an audio cassette tape for distribution to all potential contributors.

B. Legal Services:

All research, analysis and consultation necessary to provide advice concerning applicable California law and to organize and operate the PAC in compliance with the law.

C. Accounting Services:

The services of a certified public accountant, designated as treasurer of the PAC, who will ensure that sound accounting principles and practices are followed and who would prepare all necessary reports on the PAC's financial condition and operations.

SPI plans to provide these services only to the extent that they are necessary for the commencement of PAC activities, i.e. overhead organizational services. An accounting will be made of the cost of services supplied and this amount eventually will be repaid to SPI by funds raised from other sources by the PAC.

Mr. Bruce W. Robeck
January 13, 1989
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California Law

The \$2,500 ceiling is specifically limited to contributions and loans used by a political committee or party for contributions to candidates for elective office. Section 85302 of the Act provides:

No person shall make and no political committee, broad based political committee, or political party shall solicit or accept, any contribution or loan from a person which would cause the total amount contributed or loaned by that person to the same political committee, broad based political committee, or political party to exceed two thousand five hundred dollars (\$2,500) in any fiscal year to make contributions to candidates for elective office.^{2/}

The emphasized clause would appear not to include loans or contributions used for overhead expenses.

The exclusion for loans used for overhead expenses is compatible with the Commission's regulations dealing with PAC of expenditures. Under section 85306 of the Act,^{3/} persons possessing campaign funds on the effective date of Chapter 5 of the Act may expend these funds for any legal purpose other than to support or oppose a candidate for elective office. The proposed regulation for section 18536.2(c)(2) of 2 California Code of Regulations states that a campaign fund expenditure to support or oppose a candidate does not include payment for overhead expenses. Thus, overhead expenditures by definition are separate from those used to support a candidate. Since the limitation on contributions to a PAC limits contributions to \$2,500, for candidates, it seems reasonable that contributions or loans for overhead should not be subject to the limitation.

Indeed, unless the law is construed in this way, it is difficult to imagine a trade organization, union, or corporation being able to establish a new PAC in California. New organizations necessarily incur substantial start-up costs before they can begin to solicit funds to cover these costs.

^{2/} (Emphasis added.) This section will be codified in Article 3 of Chapter 5 of Title 9 of the Government Code.

^{3/} This section will also be codified in Article 3 of Chapter 5 of Title 9 of the Government Code.

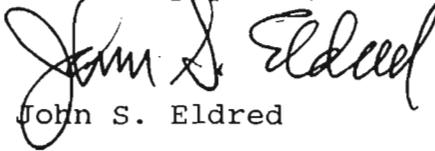
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Conclusion

For these reasons, we believe SPI's proposed loans of overhead expenses would not be governed by Section 85302 of the Act limiting contributions and loans to candidates through a PAC to \$2,500 and should be recognized as overhead and excluded from the \$2,500 ceiling. We would appreciate your review of this situation and your written concurrence.

If you have any questions, or need for further information, please do not hesitate to call us. Thank you again for assisting us in this matter.

Cordially yours,

A handwritten signature in black ink, appearing to read "John S. Eldred". The signature is fluid and cursive, with the first name "John" and last name "Eldred" clearly legible. It is positioned above the typed name "John S. Eldred".

John S. Eldred



California Fair Political Practices Commission

January 23, 1989

John S. Eldred
Keller and Heckman
1150 - 17th Street, N.W., Ste. 1000
Washington, D. C. 20036

Re: Letter No. 89-038

Dear Mr. Eldred:

Your letter requesting advice under the Political Reform Act was received on January 18, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Scott Hallabrin 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 "Kathryn E. Donovan".

Kathryn E. Donovan
Acting General Counsel

KED:plh