



California Fair Political Practices Commission

March 31, 1989

Arthur Forcier
11783 Laurelcrest Dr.
Studio City, CA 91604

Re: Your Request for Informal Assistance
Our File Nos. I-89-157, I-89-158 and
I-89-159

Dear Mr. Forcier:

You have sent three separate letters requesting advice on various aspects of the Political Reform Act (the "Act").^{1/} In your letters, you do not indicate that you are requesting this advice on behalf of any particular candidate or committee. In addition, your letters include several general and hypothetical questions. Accordingly, we consider your letters to be requests for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/}

The answers to many of the questions you have asked depend entirely on the specific facts presented. Because the questions you have asked are hypothetical or very general, we can provide only the following general advice. We have enclosed a copy of the Interim Information Manual on Proposition 68 and Proposition 73 to assist you with general questions in the future.

In your letter of February 6, 1989, you ask several questions about "independent campaigns" and limitations on independent expenditures. In a previous letter to you (Forcier Advice Letter, No. I-89-058), we responded to the question about "independent

^{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. (Government Code Section 83114; 2 Cal. Code of Regs. Section 18329(c)(3).)

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campaigns." The Act does not limit independent expenditures in any manner. (See Federal Elections Commission v. National Conservative Political Action Committee (1985) 105 S. Ct. 1459.)

In your February 6 and February 9 letters, you also ask several questions about valuation of space on mailers and services received from vendors. If a candidate or committee receives any payment for less than full or adequate consideration, the candidate or committee has received a contribution, unless it is clear from the surrounding circumstances that the payment was not made for political purposes. (Section 82015.) A "payment" includes anything of value, such as money, goods, services, or a discount or rebate in the price of an item not extended to the public generally. (Sections 82015 and 82044; Regulation 18215, copy enclosed.) The value of a contribution is its fair market value (i.e., the price a willing buyer would pay a willing seller). (Section 82025.5.)

Therefore, the fact that different candidates or committees have negotiated different prices for the same goods or services does not, of itself, mean that those who paid the lowest prices have received a contribution. Moreover, the value of a contribution to a candidate or measure is not necessarily based on the political "importance" of the elective office or ballot measure. Enclosed is a copy of an advice letter which provides guidance for determining the value of a candidate's proportionate share of space in political mailers. (Rutberg Advice Letter, No. A-87-292.)

In your February 9 letter, you ask about "application of Proposition 73 and other election laws" to candidates for political party county central committee elective positions. The term "candidate" for purposes of the Act, including Proposition 73, is defined as any candidate for elective office, including a candidate for membership on a county central committee of a qualified political party. (Sections 82007 and 82023.) Thus, candidates for political party county central committees generally are subject to the same duties and prohibitions under the Act as candidates for other elective office.

In your February 16 letter, you also ask about involvement of elected officials in political party county central committees. In the future, the Commission will be examining application of Proposition 73 to elected officials who are candidates for or members of political party county central committees. We anticipate that a regulation clarifying that political party county central committees are not controlled committees will be noticed for adoption in June. In addition, we expect that the general subject of the effect of campaign finance reform on political parties and political action committees will be discussed at the May Commission meeting.

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In your February 16 letter, you also ask various questions about the contributions limits of the Act. Those limits are summarized on page 8 of the enclosed interim information manual. You also asked about the ability of an elected official to serve on the board of directors of an organization that contributes to candidates for state and local elective office. The answer to this question depends on whether the organization becomes a controlled committee as a result of the elected official's participation. Please refer to the copies of advice letters we have previously provided to you for a general discussion of this subject.

In the February 16 letter, you ask for general information about the "elements or qualifications or ingredients for a PAC." Proposition 73 created two types of PACs, the "political committee" and the "broad based political committee." Please consult Section 85102 and Regulations 18502 and 18502.1 (copies enclosed) for the definition of these terms. You also asked a series of questions about loans between unions and their PACs. A loan of money to a PAC is a contribution (Sections 82015 and 82044), and therefore is subject to the contribution limits and disclosure requirements of the Act. Similarly, forgiveness of a loan is a contribution. (Section 82015.) We cannot provide more specific advice without specific facts and the information that you are requesting this advice on behalf of a particular union.

Finally, in your February 16 letter, you ask whether volunteer professional services provided to a candidate are nonmonetary contributions to the candidate. Volunteer services provided to a candidate without expectation of any payment from the candidate or a third party are not contributions, pursuant to Section 82015. However, if the person providing the services requests or expects payment at a future date, the services are not "volunteer" services and may be nonmonetary contributions. Similarly, if a third party compensates the person providing the services to the candidate, the third party has made a nonmonetary contribution to the candidate. Enclosed are two advice letters which discuss this subject. (Olson Advice Letter, No. A-87-318; Kornswiet Advice Letter, No. I-88-238.)

We are preparing to publish a manual on Propositions 68 and 73 which will provide you with more assistance with these questions in the future. In the meantime, please remember that we cannot provide specific advice without specific facts, the identity of the person on whose behalf you are seeking advice, and a statement indicating that you have been authorized to seek the

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

Sincerely,

Diane M. Griffiths
General Counsel

Kathryn E. Donovan
By: Kathryn E. Donovan
Counsel, Legal Division

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Enclosures

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Arthur Forcier
11783 Laurelcrest Dr.
Studio City, CA 91604
February 6, 1989

Fair Political Practices Committee
P.O. Box 807
Sacramento, CA 95804

To Whom It May Concern:

Do California's present election laws permit individuals or organizations or PACS to conduct independent campaigns in support of or in opposition to a candidate?

Can one work with a candidate on one or more programs and run other programs in support of the candidate without discussing them with the candidate and be considered to be independent on the non-discussed programs, e.g., work together on 3-mailing programs but do a 4th-mailing program independently?

Are there limits to independent expenditure in terms of amounts of money or as to types of media used such as radio or billboards or mail or as to types of voters such as members of the PAC organization or all voters, etc.?

In determining the value of a mailer, is the value divided equally among all candidates supported on the mailer or is it divided according to space allocation or type size or colors used or location or art work, etc.? For example:

If one has six candidates on a \$6,000 mailer and each has equal space, is \$1,000 allocated to each candidate? If say the Mayoral candidate has 90% of the space, does that mean that it is a \$5,400 non-monetary contribution and in violation of non-independent non-monetary contributions rules? Would it violate independent non-monetary expenditures? What if there are six candidates on a \$6,000 mailer but three of the candidates are running in the City of Los Angeles (about 1.5 million voters) and three are running in an area larger than the city (say 3 million voters)? Does that mean the three in the city are allocated about \$650 each and the three in the larger area about \$1,300 each?

If one refuses to pay the first price a vendor asks and he or she lowers the price, is that a contribution or expenditure by the vendor? How is that valued? Can there be different prices according to importance of an office or measure?

Sincerely,



Arthur Forcier