



California Fair Political Practices Commission

May 18, 1989

Peter C. Paul
Peter C. Paul Public Interest
Research Group
482 Linden Avenue
San Francisco, CA 94192

Re: Your Request for Informal
Assistance
Our File No. I-89-199

Dear Mr. Paul:

You have requested advice concerning the campaign disclosure provisions of the Political Reform Act of 1974 (the "Act").^{1/}

Your letter does not indicate that you are seeking advice on behalf of a person who has duties under the Act. Accordingly, we consider your request to be one for informal assistance pursuant to Regulation 18329(c) (copy enclosed).^{2/} The purpose of informal assistance is to provide general information and guidance concerning the Act.

QUESTIONS

1. How does the Political Reform Act distinguish between contributions and loans?

2. May a campaign contribution which has been disclosed as a monetary contribution on a campaign statement subsequently be disclosed as a loan?

3. May a non-profit organization make a contribution to a candidate?

^{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).)

4. May the executive director of a non-profit organization make a contribution to a candidate if the organization also has made a contribution to the same candidate?

CONCLUSIONS

1. The term "contribution" as used in the Act includes loans. The Act imposes special reporting requirements on the recipient when a contribution is received in the form of a loan. Generally, a contribution is a loan if at the time it is made there is an agreement or understanding between the recipient and the contributor that it will be repaid.

2. If a contribution is received in the form of a loan, the candidate or committee must report the loan on the campaign statement for the period in which the loan was received. Unless there is an agreement or understanding at the time a contribution is made that it will be repaid, a contribution may not be disclosed as a loan. However, a candidate or committee which erroneously discloses a loan as a monetary contribution may amend its campaign statement to reflect the true nature of the contribution.

3. The Act does not prohibit contributions received from a non-profit organization. However, you may wish to contact the Internal Revenue Service at (800) 424-1040 to determine if there are any restrictions which might apply to non-profit organizations making political contributions.

4. The executive director of a non-profit organization is not prohibited from making a contribution to a candidate simply because the non-profit organization makes a contribution to the same candidate. However, the contributions from the organization and the executive director may need to be cumulated for reporting purposes and for the purposes of the Act's contribution limits.

ANALYSIS

Section 82015 defines the term "contribution" as a "payment...except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes." A payment includes a loan. (Section 82044.)

In addition, Section 84216 states that "a loan received by a candidate or committee is a contribution unless the loan is received from a commercial lending institution in the ordinary course of business, or it is clear from the surrounding circumstances that it was not made for political purposes."

A contribution which is a loan must be reported as a loan on the campaign statement covering the period during which the loan was received. (Section 84211(f)(5).)

When reporting a loan received, the committee receiving the loan must state the name, address, occupation and employer of the lender, the date and amount received, the cumulative amount of loans received from the lender during the calendar year, the interest rate for the loan, and the due date. (Sections 84211(f) and 84216(c).) When reporting any part of a loan as repaid or forgiven, the following must be reported:

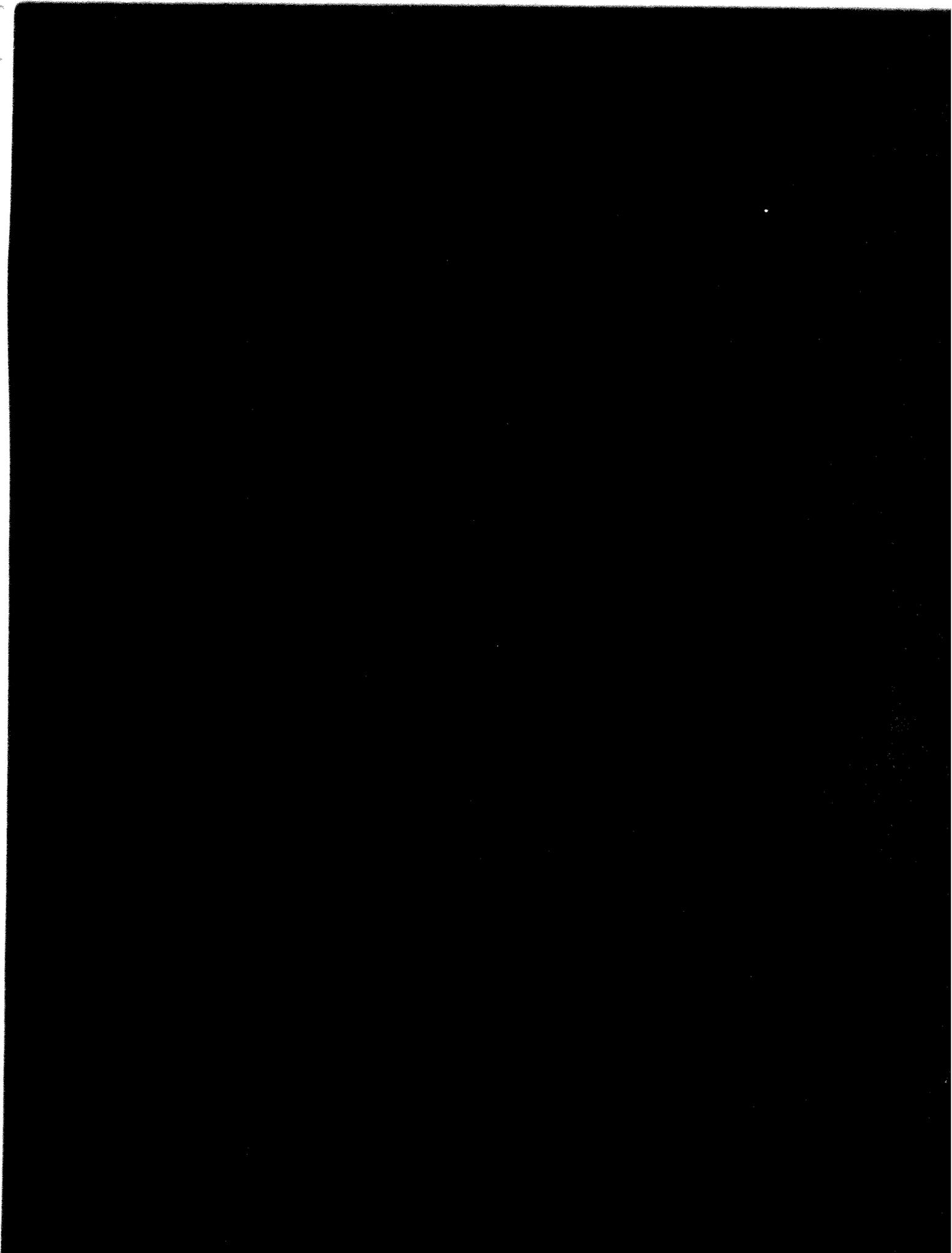
- 1) The original date and source of the loan.
- 2) Any change in the interest rate on the loan.
- 3) The balance owed on the original principal at the end of the reporting period.
- 4) The amount of any forgiveness or repayment of any part of the loan by the lender, by any cosignor or guarantor, or by any other person during the reporting period, and the name, address, occupation, and employer of any such person.

Section 84216(d).

Without greater clarification as to the authority of the executive director to make decisions concerning expenditures for political purposes by the non-profit organization, we cannot determine whether the executive director's contributions and the contributions of the non-profit organization need to be cumulated. However, enclosed are two opinions (In re Lumsdon (1976) 2 FPPC Ops. 140; In re Kahn (1976) 2 FPPC Ops. 151) issued by the Commission which might give you some understanding as to the methodology used when making such a determination.

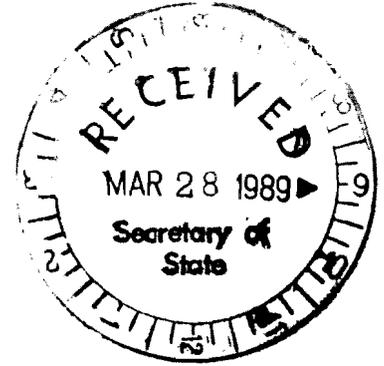
An individual is limited to \$1,000 in contributions to any one candidate within a fiscal year (July 1 - June 30). (Section 85301.) Additionally, a non-profit organization which has never made political contributions in the past is limited to \$1,000 in contributions to any one candidate within a fiscal year unless it qualifies as a "political committee" or a "broad based political committee."^{3/} (Section 85301.)

^{3/}A political committee receives, from two or more persons, contributions totaling \$1,000 or more and uses those funds to make contributions to candidates. (Sections 82013(a) and 85102(c).) A broad based political committee receives, from 100 or more persons, contributions totaling \$1,000 or more, uses those funds to make contributions to five or more candidates, and has been in existence for at least six months. (Sections 82013(a) and 85102(d).) Political committees are limited to \$2,500 in contributions to any one candidate per fiscal year, and broad based political committees are limited to \$5,000 in contributions to any one candidate per fiscal year.



Peter C. Paul Public Interest Research Group
482 Linden Avenue
San Francisco Ca. 94192

3-22-1989



California Reform Division
Secretary of State
1230 J Street
Sacramento, Ca. 95807

Re: Political Campaign Contributions--Loans

Dear Secretary of State,

Could you respond to the following questions?

If a candidate/ officerholder receives a political campaign contribution of \$500.00, and lists that same \$500.00 on their campaign contribution records as a "Contribution" in one year, at a later date in another year, can a candidate/ officerholder change that Same \$500.00 political campaign contribution on their campaign records to a "loan"?

Does California law have any specific requirements as to what differentates a political campaign contribution from a loan? If so, what are these regulat

Can a political candidate/ officerholder receive political campaign contributions from a nonprofit organization? Or from the executive director of that same nonprofit organization?

Does the State of California have any laws relating to this situation which I described above?

Thank You for Your Assistance,

A handwritten signature in black ink that reads "Peter C. Paul". The signature is written in a cursive style with a long horizontal line extending to the right.

Peter C. Paul

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Thank You for Your Assistance,

A handwritten signature in black ink that reads "Peter C. Paul". The signature is stylized with a long horizontal line extending from the end of the name.

Peter C. Paul



California Fair Political Practices Commission

April 10, 1989

Peter C. Paul
Public Interest Research Group
482 Linden Avenue
San Francisco, CA 94192

Re: Letter No. 89-199

Dear Mr. Paul:

Your letter requesting advice under the Political Reform Act was received on April 6, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

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 the 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,

Jeanne Pritchard
Jeanne Pritchard
Chief Technical Assistance
and Analysis Division

by jpb

JP:plh