



California Fair Political Practices Commission

August 24, 1989

Charles H. Bell, Jr.
Nielsen, Merksamer, Hodgson,
Parrinello & Mueller
770 L Street, Ste. 800
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. A-89-238

Dear Mr. Bell:

You have requested advice on behalf of ARCO PAC concerning the campaign provisions of the Political Reform Act.¹

QUESTIONS

1. Are employee contributions to ARCO PAC which are designated for a specific candidate attributable to ARCO PAC or to the employee for purposes of the contribution limitations imposed by Proposition 73?

2. May employee-designated funds which were held by ARCO PAC on January 1, 1989, be carried forward for purposes of making contributions to candidates in 1989?

CONCLUSIONS

1. Employee payments made to ARCO PAC which are earmarked for specific candidates are attributable to the employees making the payments. Therefore, an employee may not designate more than \$1,000 per fiscal year per candidate. As long as the employee does not also in fact direct and control the contributions made by ARCO PAC, the committee may contribute an additional \$5,000 per fiscal year to the same candidate.

However, if the employee also in fact directs and controls the contributions made by ARCO PAC, the contributions made by the employee and by ARCO PAC must be aggregated for purposes of the

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.

contribution limitations. In this situation, the employee may designate up to \$1,000 per fiscal year to a particular candidate, and ARCO PAC may contribute additional funds to the same candidate up to an amount which, when added to the employee's contribution, would not exceed the \$5,000 contribution limit for broad based political committees.

2. Employee-designated funds which were received prior to 1989 may be carried forward for purposes of making contributions to candidates in 1989. However, employees who have designated amounts which would result in the making of contributions that exceed the applicable limits should be asked to submit new designations.

FACTS

ARCO PAC is a broad based political committee as defined in Section 85102(d) and Regulation 18502. The committee allows its employee-contributors to complete a form designating their contributions for specific candidates or committees. The committee then transmits the contributions to the intended recipients, or provides checks to the employees for transmittal or delivery to the candidates. Such contributions are accompanied by a transmittal letter notifying the recipient of the true source of the funds.

ANALYSIS

As amended by Proposition 73 on the June 1988 primary election ballot, the Act imposes limitations on contributions made to candidates for state and local offices. (Sections 85300-85307.) "Persons"³ may contribute up to \$1,000 per fiscal year (July 1 - June 30) to a candidate. (Section 85301.) "Political committees"⁴ may contribute up to \$2,500 per fiscal year to a candidate, and "broad based political committees"⁵ may contribute up to \$5,000 per fiscal year to a candidate. (Section 85303.)

³ Section 85102(b) defines "person" as an individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, association, committee, and labor organization.

⁴ 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.

⁵ 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.

Your first question concerns contributions made through an "intermediary." A person is an intermediary when, without disclosure of the identity of the contributor, the intermediary would be considered the source of the contribution by the recipient. When a check is payable to a third party, but earmarked by the contributor for a specific candidate, the third party becomes an intermediary when the contribution is made by means of his or her check. (Wilson Advice Letter, No. A-79-077, copy enclosed.) In addition, Section 84302.5 states:

A person is an intermediary for transmittal of a contribution if he or she delivers to a candidate or committee a contribution from another person unless such contribution is from the person's employer, immediate family or an association to which the person belongs. No person who is the treasurer of the committee to which the contribution is made or is the candidate who controls the committee to which the contribution is made shall be an intermediary for such a contribution.

When a contribution is made through an intermediary, the recipient must disclose both the intermediary and the contributor. (Section 84302.)

There is nothing in the Act which indicates that a person who merely acts as an intermediary for a contribution is the maker of the contribution. Therefore, when ARCO PAC acts as an intermediary in connection with an employee's designated contribution to a candidate, the employee is the contributor and the appropriate limit to be applied to the contribution is the \$1,000 limit imposed on the employee.

It also should be noted that Regulation 18531.5, as adopted by the Commission on June 6, 1989, requires aggregation of contributions when a person or a majority of the same persons in fact directs and controls the decisions of two or more entities to make contributions. Therefore, if an employee makes contributions to candidates from personal funds and also in fact directs and controls the contributions made by ARCO PAC, the employee's contributions and the committee's contributions must be aggregated for purposes of the contribution limits.

Your second question is about carryover of funds held by ARCO PAC on January 1, 1989, which were designated by employee-contributors for specific candidates. Section 85306 prohibits the use of campaign funds possessed on January 1, 1989, for the purpose of supporting or opposing a candidacy. A preliminary injunction issued by the U.S. District Court for the Eastern District of California enjoins the Commission from enforcing Section 85306 with regard to contributions received prior to January 1, 1989, which were received within the contribution limitations of Proposition 73. (Service Employees International Union, AFL-CIO, CLC v. FPPC, Case No. CIVS 89-0433-LKK-JFM.) A final decision on this issue is expected in August 1989.

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Therefore, under the preliminary injunction, ARCO PAC may carry forward employee-designated funds to the extent that no employee designation would result in the making of a contribution which exceeds the contribution limitations. Such employee-designated contributions would not count toward the employee's limit of \$2,500 for contributions made to ARCO PAC during the current fiscal year.

Please do not hesitate to contact me at (916) 322-5662 if you have additional questions.

Sincerely,

Kathryn E. Donovan
General Counsel

By: Carla J. Wardlow
Assistant Chief, Technical
Assistance & Analysis Division

LAW OFFICES OF
**NIELSEN, MERKSAMER,
HODGSON, PARRINELLO & MUELLER**
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

SAN FRANCISCO
650 CALIFORNIA STREET, SUITE 2650
SAN FRANCISCO, CALIFORNIA 94108
TELEPHONE (415) 989-6800

770 L STREET, SUITE 800
SACRAMENTO, CALIFORNIA 95814
TELEPHONE (916) 446-6752

FILE NUMBER

April 13, 1989

6278.03

Ms. Kathryn Donovan
Acting General Counsel
Fair Political Practices Commission
P.O. Box 807
Sacramento, CA 95804

Re: Request for Advice

Dear Ms. Donovan:

This firm represents the ARCO PAC (current ID # 781909) which has been in existence for almost ten years. The PAC is a combined federal/state political action committee, which files reports with both the Fair Political Practices Commission and the Federal Election Commission. ARCO PAC would qualify as a broad-based committee under FPPC Regulation 18502. This letter requests your advice on the impact on Proposition 73 on the activity of the ARCO PAC.

Facts

The unique feature of the ARCO PAC is that the employee/contributor is able to designate the recipient of contributions from funds contributed by the employee to the PAC. The PAC maintains a record of these "donor designated" funds and makes contributions pursuant to the donor's request. The contribution transmittal letter indicates that the contribution is from the employee/donor; in some instances, the employee/donor actually delivers or sends his or her designated contribution to the recipient at fundraising events. (A sample transmittal letter and a sample donor designation form are attached). ARCO PAC also contributes "nondesignated" funds which are received by the PAC and contributed at the PAC's discretion. As you know, Proposition 73 imposes limits on contributions to candidates by persons and political committees.

Questions

The specific questions I would like advice about are as follows:

- 1) Are contributions made pursuant to an employee's designation attributable to the employee or to ARCO PAC for purposes of

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determining the applicable contribution limit to a candidate?

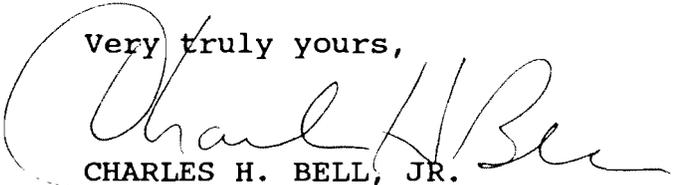
For example, if an employee designates his PAC contribution to candidate X, and the PAC makes the contribution pursuant to that designation, is the contribution made by the employee pursuant to his or her \$1,000 limit, or made by the political committee pursuant to its \$5,000 per fiscal year contribution limit.

We are aware that under this scenario there are other reporting ramifications (i.e., that ARCO PAC would be deemed an "intermediary" pursuant to Government Code sections 84302) if it is not deemed to be the contributor.

2) Assuming the Commission by regulation again permits the carryover of funds raised before January 1, 1989 for use to support candidates in 1989 and after, will such donor-designated funds on hand as of January 1, 1989 be counted in the amount the PAC may carry forward?

If you need any further information to enable you to respond to this letter, please do not hesitate to call.

Very truly yours,



CHARLES H. BELL, JR.

CHB:ss

Enclosures



ARCO PAC

AtlanticRichfieldCompany

DATE

NAME & ADDRESS

Gentlemen:

Enclosed is an earmarked contribution from a member of ARCO PAC, Atlantic Richfield Company's voluntary political action committee for employees. There are no corporate funds in the enclosed contribution.

Participation in this program is completely voluntary, and the extent of any particular employee's participation in the program is considered confidential information within the Company.

If you have any questions, please call
Manager, Political Affairs, at (213) 486-0273.

For your records, this check is an earmarked contribution from the following employee:

William W.
23637 Park Belmonte
Calabasas, CA 91302

Employer: Atlantic Richfield Company
Occupation: Vice President

Sincerely,

Treasurer

Enclosure: Check #2593

xc: William W.



ARCO PAC
Atlantic Richfield Company

SAMPLE

This is No Carbon Required paper

Donor-designated Contribution Request

Instructions: Complete this form when you wish to designate all or part of the funds you have accumulated in your ARCO PAC Donor-designated account to a political candidate or committee. Your balance can be obtained by calling the ARCO PAC office at (213) 486-0273. If you do not have enough funds in your account, enclose a personal check or money order made payable to ARCO PAC with this form. **Return to: ARCO PAC, Atlantic Richfield Company, 515 South Flower Street, Room 3200, Los Angeles, CA 90071; or use the postage-paid envelope provided.**

Check one:

- I am a member of ARCO PAC.
- I am not a member of ARCO PAC. This contribution will enroll me in ARCO PAC.

Please print or type

| | | | |
|---|----------------|------------------------|---------------|
| Full name* | | Social Security number | Today's date |
| Home address (street, city, state, zip code)* | | | |
| Business address (room number, street, city, state, zip code) | | | Work location |
| Business telephone | Home telephone | Job title* | |

Company affiliation*: _____

*Required by the Federal Election Commission

Please issue an ARCO PAC check payable to the following:

| | |
|--|-------------|
| Name of candidate or political committee | Amount (\$) |
| Address (street, city, state, zip code) | |

| | | | |
|--|--|---|--|
| <p>Office of Candidate:</p> <ul style="list-style-type: none"> <input type="checkbox"/> U.S. President <input type="checkbox"/> U.S. Senate <input type="checkbox"/> U.S. House of Representatives <input type="checkbox"/> Governor <input type="checkbox"/> State Senate <input type="checkbox"/> State House <input type="checkbox"/> Local Candidate (specify office) _____ <input type="checkbox"/> Other (specify office) _____ | <p>State _____</p> <p>District _____</p> | <p>Party</p> <ul style="list-style-type: none"> <input type="checkbox"/> Republican <input type="checkbox"/> Democrat <input type="checkbox"/> Other (specify) _____ <p>Election Type</p> <ul style="list-style-type: none"> <input type="checkbox"/> General <input type="checkbox"/> Primary <input type="checkbox"/> Special <input type="checkbox"/> Other _____ <p>Election Date _____</p> | <p>Category</p> <ul style="list-style-type: none"> <input type="checkbox"/> Incumbent <input type="checkbox"/> Challenger <input type="checkbox"/> Open Seat <p>Purpose</p> <ul style="list-style-type: none"> <input type="checkbox"/> Fundraiser <input type="checkbox"/> General support <input type="checkbox"/> Retire debt <p>Date _____</p> |
|--|--|---|--|

| | |
|---|--|
| <p>Please send my check with cover letter to one of the following:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Directly to candidate or committee listed above. <input type="checkbox"/> My home address for personal handling <input type="checkbox"/> My business address for personal handling | <p>Please check one:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Account withdrawal <input type="checkbox"/> Personal check enclosed (make check payable to ARCO PAC) |
|---|--|

My contribution is voluntary. I am aware of my right to refuse to contribute without reprisal of any kind. I am also aware of the political purpose of ARCO PAC and that a copy of the report of ARCO PAC is filed with the Federal Election Commission and is available for purchase. I am a U.S. citizen or I have been admitted as a permanent United States resident.

Signature _____ Date _____

LAW OFFICES
MCKENNA, CONNER & CUNEO

WASHINGTON, D.C.
1575 EYE STREET, N.W.
WASHINGTON, D.C. 20005
(202) 789-7500

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444 SOUTH FLOWER STREET
LOS ANGELES, CALIFORNIA 90071
(213) 687-8000

CABLE ADDRESS: MCKENCONN LSA
TELEX (TWX) 910-321 2970
TELECOPIERS:
(213) 687-6255 • (213) 687-6256

SAN FRANCISCO
TWENTY-SEVENTH FLOOR
STEUART STREET TOWER
ONE MARKET PLAZA
SAN FRANCISCO, CALIFORNIA 94105
(415) 543-0204

ORANGE COUNTY
575 ANTON BOULEVARD
COSTA MESA, CALIFORNIA 92626
(714) 432-6339

NEIL B. KORNSWIET
DIRECT DIAL (213) 687-6028

June 17, 1988

Kathryn E. Donovan
Fair Political Practices Commission
428 J Street, 8th Floor
Sacramento, California 95804

Re: Confirmation of our Telephone
Conversation of June 17, 1988

Dear Ms. Donovan:

The purpose of this letter is to confirm our telephone conversation of this date concerning whether the appearance by a celebrity at a fundraising dinner would constitute a contribution under the Political Reform Act of 1974, as amended, or the regulations issued thereunder (collectively, the Political Reform Act). As we discussed, a corporation (the "Corporation") has a celebrity (the "Celebrity") under a personal services contract. Under the terms of the contract, the Celebrity must make at least nine personal appearances a year.^{1/} As we also discussed, the Corporation has asked the Celebrity to attend a fundraising dinner, and the Celebrity's name will be listed as a "special guest" on the invitation to the fundraising dinner. The Celebrity's compensation under the personal services contract will be the same whether or not the Celebrity attends the fundraising dinner.

During our telephone conversation, I asked you whether the appearance by the Celebrity at the fundraising dinner would constitute a contribution by either the Celebrity or the Corporation under the Political Reform Act. You stated that the appearance would not constitute a contribution by either the Celebrity or the Corporation under the Political Reform Act as long as the Celebrity's compensation under the personal services contract would be the same whether or not the Celebrity attends

^{1/} The Celebrity is an independent contractor and not an employee of the Corporation.

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the fundraising dinner.

Thank you for your assistance in connection with this matter.

Very truly yours,

MCKENNA, CONNER & CUNEO

By 
Neil B. Kornswiet

NBK/aa



California Fair Political Practices Commission

June 27, 1988

Neil B. Kornswiet
McKenna, Conner & Cuneo
444 South Flower Street
Los Angeles, CA 90071

Re: 88-238

Dear Mr. Kornswiet:

Your letter requesting advice under the Political Reform Act was received on June 23, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Kathryn Donovan, 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, appearing to read "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh