



California Fair Political Practices Commission

June 28, 1989

Joe R. McCray
A Law Corporation
433 Turk Street
San Francisco, CA 94102

Re: Your Request for Advice
Our File No. A-89-334

Dear Mr. McCray:

You have requested advice on behalf of Operating Engineers Local Union No. 3 regarding the aggregation of campaign contributions under the Political Reform Act (the "Act").¹

QUESTION

If each district PAC is given control over that PAC's political contributions, will each PAC be separately subject to the contribution limitations required by Proposition 73?

CONCLUSION

If each district PAC acts independently in the making of political contributions, the contributions of the various districts will not be aggregated and each PAC will be separately subject to the contribution limits. However, if one PAC in fact directs and controls the contributions of another, or if Local 3 in fact directs and controls the contributions of district PACs, the contributions of those PACs will be aggregated.

FACTS

Operating Engineers Local Union No. 3 ("Local 3") is proposing to change its bylaws to allow the PACs of its individual districts to direct and control their own political contributions. Previously, the contributions were made to candidates by 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.

executive board of Local 3, generally in accordance with recommendations of the district grievance committees.

You have stated that the following assumptions are to be made in evaluating the aggregation issue:

1. Local 3 is a labor organization within the meaning of that term as defined in 29 USC §402 and used in 29 USC §501.

2. The geographic jurisdiction of Local 3 encompasses Utah, Northern Nevada, Northern California and Hawaii. Local 3 has 13 district offices within the four states.

3. Local 3 proposes to amend its bylaws to designate a certain portion of its dues to be used for political activities throughout its jurisdiction.

4. It is further proposed that the funds accumulated will be divided on a pro-rata basis. Separate accounts will be established for each district PAC, and authorization for expenditures will be made only by the district PAC.

5. The funds will be divided depending on the number of Local 3 members residing in each district.

6. The district PACs' officers will be locally elected and will not be common one to the other, except that the treasurer will be common to all district PACs.

7. Local 3 will not make contributions to any candidate for public office in California.

8. The district PACs will be free to make contributions to candidates for public office in California as each chooses.

In our telephone conversation of June 1st, you clarified that the common treasurer would be an ex-officio nonvoting member of the various district PACs. You also clarified that the pro-rata allocation would involve earmarking a certain portion of each member's dues to be placed in a separate contribution account for his or her district PAC.

ANALYSIS

The passage of Proposition 73 in June of 1988 resulted in the imposition of limits with respect to the amount of money that a PAC could contribute to a candidate. "Political committees"² may make contributions to a candidate not to exceed \$2,500 per fiscal

² "Political committee" is a committee of persons which receives contributions from two or more persons, and acting in concert makes contributions to five or more candidates. (Section 85102(c).)

year. (Section 85303(a).) "Broad based political committees"³ may make contributions to a candidate not to exceed \$5,000 per fiscal year. (Section 85303(b).)

Under the affiliation test recently adopted by the Commission in Regulation 18531.5 (copy enclosed),⁴ the contributions of the district PACs would not be aggregated unless the same person or a majority of the same persons in fact directs and controls the decisions of those entities to make contributions or expenditures to support or oppose a candidate or candidates for elective office. According to the facts you have presented, each district PAC would control its own campaign contributions and expenditures and there would be no overlapping voting membership. Therefore, the contributions would not be aggregated, and each PAC could contribute up to contribution limits.

As discussed in a prior telephone conversation with your office, it will be important for contributors to earmark the funds to clarify that Local 3 will now be acting as an "intermediate unit" for collection of contributions. An "intermediate unit" is defined as follows:

...a chapter, local, branch, unit or similar component of a sponsor that collects money from its members, officers, employees or shareholders which is "earmarked" for use by the sponsored committee with the meaning of 2 Cal. Adm. Code Section 18215(c).

(Regulation 18419(a)(3), copy enclosed.)

Funds are "earmarked" if:

...at the time of making the payment, the donor knows or has reason to know that the payment or funds with which the payment will be commingled will be used to make contributions...or

³ "Broad based political committee" means a committee of persons which has been in existence for more than six months, receives contributions for one hundred or more persons, and acting in concert makes contributions to five or more candidates. (Section 85102(d).)

⁴ Regulation 18531.5 was adopted by the Commission at its June 6, 1989 meeting. Although this regulation is not yet effective, it represents clarification by the Commission on the issue of aggregation. Therefore, staff will be advising pursuant to its terms pending its official effective date. The regulation adopts different standards from those set forth here for entities in a parent-subsidiary relationship or entities with the same controlling owner.

expenditures.... Factors relevant to a determination that the donor has reason to know that all or part of the payment will be used to make expenditures and contributions include but are not limited to the established practice of the person or organization with respect to expenditures and contributions and any representations made when the payment is solicited.

(Regulation 18215(c), copy enclosed.)

You have indicated that the established practice of Local 3 is to exercise control over funds marked for political contributions and to make the contributions directly to the candidates. Therefore, the funds would currently be considered "earmarked" for Local 3. (Leidigh Advice Letter, No. A-89-241, copy enclosed.) A subsequent transfer of the funds from Local 3 to the district contribution accounts would constitute a contribution to the district PACs and be limited to \$2,500. In order to avoid this result, members must be informed of the new procedure so that they will know or have reason to know that a specific portion of the funds collected is earmarked for the use of each district PAC rather than Local 3.

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

Sincerely

Kathryn E. Donovan
General Counsel



By: Margaret W. Ellison
Counsel, Legal Division

KED:MWE:plh

Enclosures

JOE R. McCRAY
A LAW CORPORATION
433 TURK STREET
SAN FRANCISCO, CA 94102

(415) 775-3900

May 24, 1989

California Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Re: Political Action Committees affiliated with
Operating Engineers Local Union No. 3.

Dear Commissioners:

This is a request for advice regarding the duties of persons in forming political action committees affiliated with Operating Engineers Local Union No. 3. The assumptions upon which this request are based are as follows:

1. Local 3 is a labor organization within the meaning of that term as defined in 29 USC §402 and used in 29 USC §501.
2. The geographic jurisdiction of Local 3 encompasses the State of Utah, Northern Nevada, Northern California and Hawaii. Local 3 has 13 district offices within the four states.
3. Local 3 proposes to amend its Local By-Laws to designate a certain portion of its dues to be used for political activities throughout its jurisdiction.
4. It is further proposed that the funds accumulated from this designation will be divided, on a pro rata basis, among Political Action Committees established in each of its districts. Separate accounts will be established for each District PAC, and authorization for expenditure will be made only by the District PAC.
5. The funds shall be divided depending on the number of Local 3 members residing in each district.
6. The District PACs' officers will be locally elected and shall not be common one to the other, except that the treasurer shall be common to all District PACS.
7. Local 3 shall not make contributions to any candidate for public office in California.

California Fair Political Practices Commission
May 24, 1989
Page Two

8. The District PACs shall be free to make such contributions as each chooses.

Historically, rank and file members of the Local in each district are elected to serve on the District Grievance Committee. These committees meet each month and deal with local problems in that District. Among the traditional functions of a District Grievance Committee has been the recommendation for endorsement and contributions to local candidates or local functions of non-local or statewide candidates.

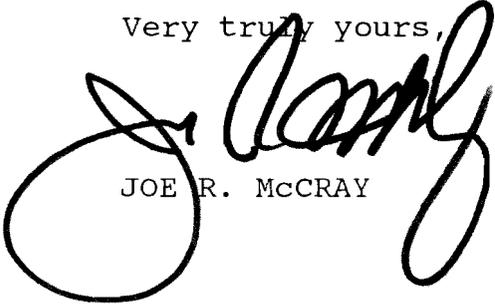
The local Grievance Committees in the past have made recommendations for contributions to the Local's executive Board that meets each month. Although the Executive Board can disapprove of a recommendation, the recommendations of the Grievance Committees have almost always been approved. Once there was approval, then the Local would issue a check to the candidate.

The proposal would dramatically change the traditional arrangement by giving each District PAC funds generated in their district from which contributions would be made.

We respectfully request your advice and confirmation that by giving control over spending to each District PAC, each PAC will be separately subject to the limitations required by Proposition 73, and that since each will decide separately on who they wish to support, that any similar contributions will not be aggregated.

Your prompt response will be greatly appreciated, as such an amendment must be filed by June 1, 1989.

Very truly yours,


JOE R. McCRAY

JRM/kc

cc: T.J. Stapleton



California Fair Political Practices Commission

June 1, 1989

Joe R. McCray
A Law Corporation
433 Turk Street
San Francisco, CA 94102

Re: Letter No. 89-334

Dear Mr. McCray:

Your letter requesting advice under the Political Reform Act was received on May 30, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margaret Ellison 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,


Kathryn E. Donovan
General Counsel

KED:plh