



California Fair Political Practices Commission

February 7, 1990

Don Benninghoven
Executive Director
League of California Cities
1400 K Street
Sacramento, CA 95814

Re: Your Request for Informal Assistance
Our File No. I-89-669

Dear Mr. Benninghoven:

You are seeking advice on behalf of the League of California Cities, which acts as a representative of California cities and their elected officials, regarding application of the campaign contributions provisions of the Political Reform Act (the "Act")¹ to local elected officials. Because your questions do not refer to a specific pending governmental decision, we are treating your request as one for informal assistance, pursuant to Regulation 18329(c) (copy enclosed)²

The following advice is based upon the facts provided in your letter and a subsequent telephone conversation on December 11, 1989 with JoAnne Spears of your office.

QUESTIONS

1. Can local elected officials use their campaign funds to contribute to the qualification of an initiative for the ballot, and to support or oppose a qualified initiative?
2. If campaign funds can be contributed to qualify, support or oppose an initiative, does it matter when the campaign funds were raised? How should such contributions be reported?

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).)

3. What restrictions and reporting requirements, if any, apply to a local elected official who raises money as an intermediary for an initiative campaign?

4. Are there other restrictions provided for by the Act that apply to local officials' participation in, contributing to, or fund-raising for, initiative campaigns?

CONCLUSIONS

1. A local elected official may use his or her campaign committee funds for the purpose of making contributions to qualify, support, or oppose an initiative. The official, however, may not use his or her campaign funds to contribute to an initiative campaign committee controlled by another candidate.

2. The contribution of campaign funds to a committee to qualify, support, or oppose an initiative does not depend on when the campaign funds are raised. The recipient (initiative campaign) committee would report the receipt of the funds as contributions received; the local elected official's campaign committee would report the funds as expenditures made.

3. A local elected official may act as an intermediary for an initiative campaign's fund raising in the same manner, and would be subject to the same obligations and requirements, as any other individual. An elected official may serve as an intermediary for purposes of making contributions to an initiative campaign despite the fact that the initiative campaign committee is a candidate controlled committee.

4. A local elected official who also serves as an appointed voting member of another agency may, under certain circumstances, be prohibited from accepting, soliciting, or directing contributions on behalf of an initiative committee.

FACTS

The League of California Cities acts as a representative of California cities and local elected officials. It has formed a task force to evaluate options available to cities and elected officials for participation in the initiative process. This was done in part because cities and elected officials have been solicited to participate in initiative campaigns, both in the effort to qualify initiatives for the ballot as well as to support or oppose initiatives on the ballot.

Several questions have arisen with respect to the ability of local elected officials to participate in initiative campaigns, particularly concerning the official using his or her campaign funds, acting as an intermediary for contributions, and participating in fund raising activities.

ANALYSIS

Contributions to Initiative Campaign Committee from Campaign Funds

All locally elected officials are "candidates" for purposes of the Act, until they close down all of their campaign committees (Section 82007). The Act prohibits candidates and their controlled committees from making contributions or loans from campaign funds to any other candidate or controlled committee. (Section 85304.) However, the Act permits candidates to make contributions from campaign funds to noncandidate controlled committees which are formed exclusively to support or oppose ballot measures.³ (See Pineschi Advice Letter, A-89-578; Hiltachk Advice Letter, A-89-533, copies enclosed.) Moreover, the Act does not impose limits on the contributions made to committees that do not use the funds to support or oppose candidates.⁴

Therefore, provided the initiative campaign committee does not use its funds to support or oppose candidates, there is no limit on the contributions that a local candidate can make from his or her campaign funds to the initiative committee. However, a local candidate may not contribute to another candidate's controlled ballot measure committee because Section 85304 prohibits contributions from a candidate's campaign funds to any other candidate or controlled committee.

A local candidate may contribute campaign funds to initiative campaign committees regardless of when the funds were raised. Although Section 85306 provides that campaign funds possessed on January 1, 1989, cannot be used "to support or oppose a candidacy for elective office," this restriction is limited to campaigns for elective office only. (Regulation 18536.2(c)(1), copy enclosed.) Moreover, a federal court has placed a stay on enforcement of Section 85306. (Service Employees International Union, AFL-CIO CLC, et al. v. FPPC (Case No. CIVS 89-0433-LKK-JFM.)) The local candidate would report the contribution to the initiative committee as an expenditure on his or her campaign disclosure statement; the

³ This applies to initiatives which have qualified for the ballot as well as the effort to qualify an initiative for the ballot. The Act defines "measure" as "any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot." (Section 82043, emphasis added.)

⁴ Contributions made to recipient committees, including political committees, broad based committees and political parties, which make contributions to candidates for elective office, are limited to \$2,500 per fiscal year. (Sections 85102, 85302.)

initiative committee would report the receipt of the contribution received on its campaign disclosure statement.

Intermediaries

The Act defines "intermediary" as an individual who

... 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.⁵

Thus, neither the treasurer of the committee receiving the contribution, nor the person who delivers a contribution from his or her employer, immediate family, or association, are intermediaries. Subject to certain conditions and requirements, discussed below, anyone else can act as an intermediary by delivering a contribution from another person to a candidate or committee.

There are no special considerations or requirements for a local elected official who acts as an intermediary for the transmittal of contributions to an initiative campaign committee. The Act permits delivering a contribution as another's intermediary when disclosure is made to the recipient of the identity of both the intermediary and the person for whom the intermediary is acting. This identifying information must then be included on the campaign disclosure statement filed by the recipient of the contribution. (Section 84302.)⁶

Normally, this required identification is facilitated when an intermediary simply acts to deliver a contribution from another to the recipient committee. However, an elected official may also act as an intermediary when he or she accepts contributions "ear-marked" for an initiative campaign committee, deposits them into

⁵ See also FPPC 1989 "Information Manual on Campaign Disclosure Provisions of the Political Reform Act," pg. 47: "When the information contained on the check or other written instrument provided to the recipient of a contribution is different than the name of the person who is actually making the contribution, an intermediary is involved in making the contribution."

⁶ A forthcoming Commission regulation makes clear that an intermediary is, among other things, an individual whom the recipient of the contribution would consider to be the person making the contribution absent the disclosure of the identity of the true source of the contribution. (Regulation 18432.5(a)(1), copy enclosed.)

his or her campaign account, and then writes a check for the contributions' amount to the initiative campaign committee. In so doing the official acts as an intermediary because he or she "delivers to a committee a contribution from another person." (Section 84302.5.)

While permitted under the Act, this method is not preferred because it generates additional record keeping obligations in addition to the required identifying disclosure. We suggest that the Commission's Technical Assistance and Analysis Division be contacted for instruction on how such contributions received and deposited by the official are to be reported on subsequent campaign disclosure statements.

A local elected official can, therefore, act as an intermediary for contributions to an initiative campaign committee provided identifying information about the actual contributor, as well as the elected official acting in an intermediary capacity, is provided to the committee receiving the contribution.

Initiative Campaign Committee Controlled by a Candidate

While a local elected official may not make contributions from his or her campaign funds to an initiative campaign committee controlled by a candidate (Section 85304)⁷, an intermediary who transmits contributions from others is not by definition "making" the contribution. (Section 84203.5.) The local elected official can therefore act as an intermediary for directing contributions to a candidate-controlled initiative committee provided proper disclosure is made to the committee of both the intermediary and the person for whom the intermediary is acting. The official may not make, and a controlled committee may not receive, a contribution from his or her campaign funds because the Act specifically prohibits such a transfer.

Other Restrictions

Section 84308 prohibits an officer of an appointive local government agency from accepting, soliciting or directing a contribution of more than \$250 from a party to a proceeding involving a license, permit, or other entitlement for use pending before the agency, and for three months following a final decision in the proceeding. This restriction applies to a separate agency, such as a LAFCO, special district board, joint powers authority, or regional planning agency.

Section 84308 prohibits the officer's acceptance, solicitation, or direction of contributions for himself or herself, and on

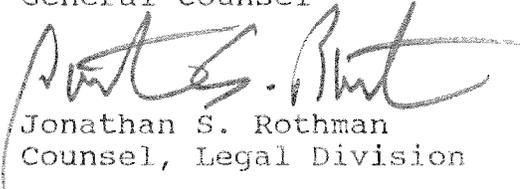
⁷ A candidate controls a committee if he or she has a significant influence on the actions or decisions of the committee. (Section 82016.)

behalf of any other candidate, officer, or committee. (Section 84308(b); Regulation 18438.6, copy enclosed.) Therefore, a local elected official sitting on an appointive board may not act as an intermediary for, or otherwise solicit any contribution (i.e., for his or her own campaign, for another candidate's campaign, or for a ballot measure campaign) from a party appearing before that agency, and for three months after a final decision in the matter. (Regulation 18438.6, copy enclosed.)⁸ The facts particular to the situation would determine whether the issue before the agency was a "license, permit, or other entitlement for use" (Section 84308(a)(5)), and whether the contributor was a "party" or "participant" to the proceeding (Section 84308(a)(1), (2)).

I trust this letter has provided you with the guidance you requested. If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Kathryn E. Donovan
General Counsel



Jonathan S. Rothman
Counsel, Legal Division

KED:JSR:plh

Enclosures

⁸ Additionally, a local elected official sitting on an appointive agency, having received a contribution of more than \$250 within the preceding twelve months from a party appearing before the agency, is required to disclose the contribution and disqualify himself or herself from participation in the preceding. (Section 84308(c).)



League of California Cities

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Nov 17 4 01 PM '89

Sacramento, California
November 16, 1989

Via Telecopy and Delivery

Gregory Baugher
Executive Director
Fair Political Practices Commission
428 J Street, Suite 800
P. O. Box 807
Sacramento, CA 95804

Re: Request for Advice

Dear Mr. Baugher:

Pursuant to Section 18329 of title 2 of the California Code of Regulations, the League of California Cities is writing to request the advice of the Fair Political Practices Commission on several issues regarding local elected official participation in initiative campaigns.

The League is writing as a representative of California cities and their elected officials. It has formed a task force to evaluate options open to cities in participating in the initiative process. This task force is chaired by Greg Cox, the Mayor of Chula Vista; its members are Al Urias, Council Member for Santa Paula; Joy Picus, Council Member for Los Angeles; Karen Humphrey, Mayor of Fresno; and Jane Baker, Council Member for San Mateo. See 2 Cal. Code of Reg. § 18329(b)(1).

As the Commission is aware, important public policy decisions are increasingly being made by the electorate through the initiative process. Cities and their local elected officials are being asked to participate in initiative campaigns, both before initiatives qualify for the ballot and after. Thus, local elected officials need to understand how campaign finance laws and the Political Reform Act affect their ability to participate in this process.

The issues on which the League seeks advice are as follows:

1. May local elected officials use their campaign funds to contribute to the qualification of initiatives for the ballot?
2. May they use such funds to support or oppose an initiative which has already qualified for the ballot?
3. Does it matter when the campaign funds were collected (e.g., before or after January 1, 1989)?

4. How should any such contributions from campaign funds be reported?
5. What are the restrictions and reporting requirements if a local elected official raises money as an intermediary for an initiative campaign?
6. Do any of these answers change if the initiative campaign being contributed to is sponsored by another elected official or candidate for public office?
7. Does the Political Reform Act contain any other restrictions on local officials participation in initiative campaigns?

Thank you for your time and attention to this inquiry. The Commission's response will be of great assistance to local elected officials throughout the state.

Very truly yours,

A handwritten signature in black ink, appearing to read "Don Benninghoven", with a long horizontal flourish extending to the right.

Don Benninghoven
Executive Director

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California Fair Political Practices Commission

November 20, 1989

Don Benninghoven
Executive Director, League of
California Cities
1400 K Street
Sacramento, CA 95814

Re: Letter No. 89-669

Dear Mr. Benninghoven:

Your letter requesting advice under the Political Reform Act was received on November 17, 1989 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Jonathan Rothman 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

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