



California Fair Political Practices Commission

September 23, 1993

Charles P. Scully, II
Carroll & Scully, Inc.
300 Montgomery Street, Suite 735
San Francisco, CA 94104-1902

Re: Your Request for Informal Assistance
Our File No. I-93-310

Dear Mr. Scully:

You have requested informal advice on behalf the United Food and Commercial Workers Local 1288 Political Action Committee ("Local 1288 PAC") concerning the campaign reporting provisions of the Political Reform Act (the "Act").^{1/}

This letter confirms telephone advice I provided to you on July 27, 1993, and along with the following clarifying information, confirms that the procedures outlined in your letter of August 11, 1993, are correct. Under the Act, the United Food and Commercial Workers Local 1288 ("Local 1288") qualifies as an intermediary because its member contributions are first deposited into Local 1288's bank account and later transferred into the Local 1288 PAC bank account. (Regulation 18432.5.)

For disclosure purposes, if a transfer of \$100 or more in member contributions is received by the committee, it must indicate on its campaign statement (Form 450 or Form 420) that Local 1288 is acting as an intermediary. (Regulation 18419(c)(3).) In addition, any contributor of \$100 or more in a calendar year must be itemized on the statement. (Section 84211.) Since you indicated that members will be making contributions of less than \$25 per calendar year, for clarification purposes, we recommend that a notation be made on the statement that no single contributor is required to be itemized.

Also, enclosed for your reference is Regulation 18421.1 which defines when a contribution is "received". The regulation provides disclosure standards for committees that receive contributions by means of membership dues or payroll deductions.

^{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.

If you have questions concerning this letter, please contact me at (916) 322-5662.

Sincerely,

Lynda Cassady
Assistant Division Chief
Technical Assistance Division

ADVICE LETTER # I-93-310 REQUESTER: Scully

This letter was written by: Cassady, C.

The 21 working-days expires: N/A

However, a response has been requested by: _____

Upon review, return to: Bowden, E.

Division Chief, TAD

CW APPROVED

Comments: _____

Assistant General Counsel:

____ APPROVED

____ NOT APPROVED

____ Without change

____ See changes noted in letter

Comments: _____

General Counsel:

____ APPROVED

____ NOT APPROVED

____ Without change

____ See changes noted in letter

Comments: _____

LAW OFFICES
OF
CARROLL & SCULLY, INC.

300 MONTGOMERY STREET
SUITE 735
SAN FRANCISCO, CALIFORNIA 94104-1909

Aug 12 11 35 AM '93

CHARLES P. SCULLY (1915-1985)
DONALD C. CARROLL
CHARLES P. SCULLY, II

TELEPHONE
362-0241
AREA CODE 415

August 11, 1993

Fair Political Practices
Commission
Legal Department
428 J Street, Suite 800
Sacramento, CA 95804-0807

Re: Request for Informal Assistance -
United Food and Commercial Workers
Local 1288 Political Action Committee

Dear Gentlepersons:

As noted during my August 11, 1993, telephone conversation with Ms. Diane Stone of the Legal Department, these offices have been retained by the above-referenced entity to solicit informal advice from the Commission covering appropriate reporting of certain contributions received by the Political Action Committee.

The membership of the Local Union recently adopted a Resolution which provides in pertinent part that one percent of the periodic dues paid by individual members, which will typically reflect perhaps \$1 to \$2 per month, will constitute voluntary earmarked contributions to the aforesaid political action committee from the individual dues paying members of the Local Union to be utilized by the Committee in whole or in part for contributions to candidates for the California Assembly, Senate, State Constitutional Offices and local elected offices.

The Resolution provides that no contributions shall be made to the Committee by or on behalf of non-members who pay agency fees to the Local Union. The Resolution further provides that members of the Local Union may direct in writing that the portion of their future periodic dues constituting voluntary earmarked contributions to the Committee shall not in fact be paid to the Committee.

As background in terms of the phrase "agency fees payor" as used in this correspondence, I would note that in a Union setting, an "agency fee payor" is an individual who refuses to join the Local Union but who, due to some form of Union security clause, is required to pay periodic fees

to the Union which holds exclusive bargaining rights covering the individual's employment position. A progression of United States Supreme Court decisions have defined what may and may not be charged as a service fee by a Local Union to an agency fee payor. It is the position of the Local Union that it is a voluntary association and that as such, individuals who are not voluntary members of the Local Union should not be permitted to pay the periodic contribution to the Political Action Committee.

It is the opinion of the Political Action Committee that under the aforesaid Resolution, the individual members of United Food and Commercial Workers Local 1288 are separate and distinct contributors to the Political Action Committee.

It is the view of the Committee that absent some extraordinary additional voluntary contribution by an individual member, individual members will be making maximum contributions of less than \$25.00 per calendar year.

Since the Local Union receives the initial dues payment and then passes the one percent voluntary earmarked contribution on to the Political Action Committee, it is the view of the Committee that the Local Union is acting as an "intermediary" for purpose of the aforesaid contributions. In campaign reports, it is the intent of the Committee to report contributions received through the Local Union with an annotation that the total amount from the intermediary Local Union reflects per month, X cents from Y number of members received during the month subject to reporting on each campaign statement. The Local union will be listed as the intermediary for purposes of the contributions.

The Committee believes that the aforesaid scenario is consistent with prior informal assistance rendered by the Commission in your File Nos. 1-90-716 and I-93-028. Copies of those prior Informal Advice Letters are enclosed for your ready reference.

The Committee would request advice as to whether or not the procedures for reporting as set forth above are appropriate.

Should you have any question whatsoever in terms of any of the foregoing or the enclosed or should you

Fair Political Practices
Commission
August 11, 1993
Page 3

require any further factual information prior to rendering informal assistance, there should be no hesitation to contact these offices by the means most convenient to you

Thank you.

Very truly yours,

LAW OFFICES OF
CARROLL & SCULLY, INC.



Charles P. Scully, II

CPSII:mbm
ope-3-afl-cio

Enclosures

cc: Mr. David M. Wilson - w/enc.
Mr. Don Hunsucker - w/enc.



California Fair Political Practices Commission

April 5, 1993

Charles P. Scully, II
Carroll & Scully, Inc.
300 Montgomery Street, Suite 735
San Francisco, CA 94104-1902

Re: Your Request for Informal Assistance
Our File No. I-93-028

Dear Mr. Scully:

This is in response to your request for informal assistance under the campaign disclosure provisions of the Political Reform Act.^{1/}

QUESTION

May the United Food and Commercial Workers Political Action Committee report its local unions as intermediaries of contributions deducted from the individual union member's dues payments?

CONCLUSION

The Committee may report on its campaign statements the local unions as intermediaries for the member contributions with annotations as to the number of members multiplied by the amount of each contribution.

FACTS

The local unions of the United Food & Commercial Workers ("UFCW") have adopted resolutions which provide that a portion of periodic dues paid by individual members, typically between 5¢ and

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. 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).)

428 J Street, Suite 800 • P.O. Box 807 • Sacramento, CA 95812 • (916) 322-5660

10¢ per week, will constitute voluntary earmarked contributions to the UFCW Political Education Fund (the "Fund"). The contributions will be utilized by the Fund for contributions to candidates for California Assembly, Senate and State Constitutional offices.

The local unions receive the voluntary contributions from its individual members, approximately \$5.20 per year, and then transmit the contribution to the Fund. The Fund would like to report the contribution received from members, through the Local Union with an annotation that the total amount from a particular union reflects X cents from Y number of members received during the months subject to reporting in each campaign statement. Each and every Local Union acting as an intermediary would be listed in this manner.

You had received earlier advice that reporting in this manner is consistent with Commission Regulation 18419.

ANALYSIS

Regulation 18215 states, in relevant part:

(a) A contribution is any monetary or nonmonetary payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Received by or made at the behest of:

* * *

(D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any membership organization, labor union or corporation.

The United Food & Commercial Workers Region 15 Council Political Education Fund is a recipient committee. Individual members of the local unions make contributions between 5¢ and 10¢ per week to the local unions to be utilized by the Fund. The local unions transmitting the contributions are intermediaries and must be reported as an intermediary by the Fund.

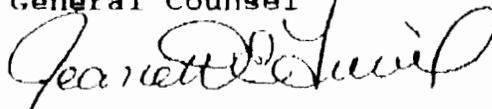
Additionally, the Fund should report contributions received through the local unions indicating the total amount from the local union reflects, per month, 5¢ multiplied by the number of individual members received during the months subject to reporting in each campaign statement. Each local union acting as an intermediary would be reported in this manner.

This procedure is consistent with the previous advice to you relative to the affiliated unions of the California Labor Federation in our February 15, 1991 letter.

I trust this answers your question. If you need further assistance, please feel free to contact the Commission's Legal Division at (916) 322-5901.

Sincerely,

Jeff Marschner
General Counsel



By: Jeanette E. Turvill
Political Reform Consultant
Legal Division

JM/JET/jt



Calif., via Fair Political Practices Commission

February 15, 1991

Charles P. Scully, Inc.
300 Montgomery Street, Suite 735
San Francisco, CA 94104-1909

Re: Your Request for Informal Assistance
Our File No. I-90-716

Dear Mr. Scully:

This is in response to your request for advice regarding the attribution of contributions to the individual members of the affiliated unions of the California Labor Federation, AFL-CIO (the "AFL-CIO"), under the provisions of the Political Reform Act (the "Act").¹ Since your request does not involve a specific pending decision, we are treating it as a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).²

QUESTION

Does language in the constitution of the AFL-CIO make each individual member of each affiliated union in the AFL-CIO a separate contributor for purposes of reporting contributions?

CONCLUSION

Language in the constitution of the AFL-CIO does result in each individual member of each affiliate being deemed a separate contributor for purposes of reporting contributions.

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).)

FACTS

The California Labor Federation, AFL-CIO, is a voluntary federation of more than 100 affiliated labor organizations. The constitution of the AFL-CIO requires each affiliate to make a per capita payment of 30 cents per month. From these payments, 25 cents per month accrue to the general fund and 5 cents per month accrue to the AFL-CIO's Committee on Political Education ("COPE"), the political action committee of the AFL-CIO.

The AFL-CIO amended its constitution recently; it added the following:

Amounts accruing to the Standing Committee on Political Education reflect voluntary earmarked contributions at 5¢ per month from individual members of affiliated unions and will be utilized, in part or in whole, for contributions to candidates for California legislative and constitutional offices. No per capita payment shall be made by or on behalf of financial core members of affiliated unions.

You are now seeking confirmation that this language makes each individual member of the affiliated union a contributor to COPE of the designated 5¢ per month; you believe that the affiliated unions are acting as "intermediaries" for the transmittal to COPE of the 5¢ per month contribution.

ANALYSIS

Regulation 18215 states, in relevant part:

(a) A contribution is any monetary or nonmonetary payment made for political purposes for which full and adequate consideration is not made to the donor. A payment is made for political purposes if it is:

(1) For the purpose of influencing or attempting to influence the action of the voters for or against the nomination or election of a candidate or candidates, or the qualification or passage of any measure; or

(2) Received by or made at the behest of:

* * *

(D) An organization formed or existing primarily for political purposes as defined in subsection (a)(1), including but not limited to a political action committee established by any

membership organization, labor union or corporation.

The language adopted by AFL-CIO suggests that the 5¢ per month amount is a voluntary payment from each individual member of each affiliate; it also suggests that a union member could refuse to pay the 5¢ per month to the local affiliated union for payment to the AFL-CIO. Under such circumstances the payment to COPE is a contribution from the individual member. (Regulation 18215(a)(2)(D).) The affiliated union which transmits the contribution to COPE is an intermediary and must be reported as an intermediary by the recipient of the contribution, COPE. (Regulation 18419, copy enclosed.)

You have also stated in your letter that COPE "plans on reporting contributions received through each affiliated local union, acting as intermediaries, with an annotation that the total amount from each affiliated local union reflects, per month, 5¢ from "X" number of members received during the months subject to reporting in each campaign statement. In accord with past practice each local union will be listed." Such reporting would appear to be consistent with Regulation 18419. Please note that Section 84104 requires COPE to maintain such records as are necessary to comply with the reporting requirements imposed by the Act. Regulation 18401³ (copy enclosed), which details the recordkeeping requirements, is in the process of being reviewed and resubmitted to the Commission.

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

Sincerely,

Scott Hallabrin
Acting General Counsel



By: Jeevan S. Ahuja
Counsel, Legal Division

SH:JA:aa

Enclosures

³ Regulation 18401 will be reviewed by the Commission at its meeting in March, 1991. It does not appear that the review will affect the recordkeeping for contributions of amounts less than \$25.

Charles P. Scully, II
Carroll & Scully, Inc.
300 Montgomery Street, Suite 735
San Francisco, CA 94104-1902

Re: Your Request for Informal Assistance
Our File No. I-93-310

Dear Mr. Scully:

You have requested informal advice on behalf the United Food and Commercial Workers Local 1288 Political Action Committee ~~(herein referred to as ("Local 1288 PAC"))~~ concerning the campaign reporting provisions of the Political Reform Act (the "Act").^{1/}

This letter confirms telephone advice I provided to you on July 27, 1993, and along with ^{the following} clarifying ^{information,} guidance, confirms that the procedures outlined in your letter of August 11, 1993, are correct. Under the Act, the United Food and Commercial Workers Local 1288 ~~(herein referred to as ("Local 1288"))~~ qualifies as an intermediary because its member contributions are first deposited into Local 1288's bank account and later transferred into the Local 1288 PAC bank account. (Regulation 18432.5.)

For disclosure ^{as} purposes, if a transfer of \$100 or more ⁱⁿ ~~of~~ member contributions is received by the committee, it must indicate on its campaign statement (Form 450 or Form 420) that Local 1288 is acting ^{as} an intermediary. (Regulation 18419(c)(3).) In addition, any contributor of \$100 or more in a calendar year must be itemized on the statement. (Section 84211.) Since you indicated that members will be making contributions of less than \$25 per calendar year, for clarification purposes, ~~the Commission we~~ recommends ^{as} that a notation be made on the statement that no single contributor is required to be itemized.

Also, enclosed for your reference is Regulation 18421.1 which defines when a contribution is "received". The regulation provides disclosure standards for committees that receive contributions by means of membership dues or payroll deductions.

^{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.

If you have questions concerning this letter, please contact me at (916) 322-5662.

Sincerely,

Lynda Cassady
Assistant Division Chief
Technical Assistance Division

Charles P. Scully, II
Carroll & Scully, Inc.
300 Montgomery Street, Suite 735
San Francisco, CA 94104-1902

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Dear Mr. Scully:

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This letter confirms telephone advice I provided to you on July 27, 1993, and *correctly stated in follow clarifi-
info.* also clarifies the reporting procedures outlined in your letter of August 11, 1993. Under the Act, the United Food and Commercial Workers Local 1288 (herein referred to as "Local 1288") qualifies as an intermediary because its member contributions are first deposited into Local 1288's bank account and later transferred into the Local 1288 PAC bank account. (Regulation 18432.5.)

For disclosure purposes, if a transfer of \$100 or more *of* member contributions is received by the committee, it must indicate on its campaign statement (Form 450 or Form 420) that Local 1288 is acting an intermediary. (Regulation 18419(c)(3).) In addition, any contributor *of* \$100 or more in a calendar year must be itemized on the statement. (Section 84211.) Since you indicated that members will be making contributions of less than \$25.00 per calendar year, for clarification purposes, the Commission recommends that a notation be made on the statement that no single contributor is required to be itemized.

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Sincerely,

Lynda Cassady
Assistant Division Chief
Technical Assistance Division