



## FAIR POLITICAL PRACTICES COMMISSION

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June 30, 2009

Mr. David Gould  
California Political Treasurers Association  
555 South Flower Street, Suite 4120  
Los Angeles, California 90071

Re: Your Request for Informal Assistance  
**Our File No. I-09-136**

Dear Mr. Gould:

This letter responds to your request for advice regarding the campaign provisions of the Political Reform Act (the "Act").<sup>1</sup> Because your letter requests general advice rather than advice regarding a specific committee or set of facts, we have treated your request as one for informal assistance.<sup>2</sup>

### QUESTIONS AND ANSWERS

On behalf of the California Professional Treasurers Association, the organization of accountants, bookkeepers, and attorneys who serve as treasurers for state and local political committees throughout the state, you are requesting advice about Regulation 18247.5 regarding primarily formed and general purpose committees. Your specific questions are stated below.

1. *A committee must perform calculations under Regulation 18247.5(c) to determine its jurisdiction (i.e., is it a state, county, or city committee?). When performing these calculations, a committee treasurer must determine, among other things, the jurisdiction of the general purpose committees to which his or her committee made*

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

<sup>2</sup> Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

*contributions. (I.e., were the general purpose committees receiving contributions state, county or city general purpose committees?) To make this determination, may the contributing committee rely on the jurisdiction indicated on the receiving committee's most recently filed Form 410 at the time the contribution is made?*

Yes, the contributing committee may rely on the receiving committee's most recently filed statement of organization.

The Act groups general purpose committees into state, county or city committees. Section 82027.5 of the Act defines the term "general purpose committee" as follows:

"(a) 'General purpose committee' means all committees pursuant to subdivision (b) or (c) of Section 82013, and any committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose more than one candidate or ballot measure, except as provided in Section 82047.5 [defining primarily formed committee].

"(b) A 'state general purpose committee' is a political party committee, as defined in Section 85205, or a committee to support or oppose candidates or measures voted on in a state election, or in more than one county.

"(c) A 'county general purpose committee' is a committee to support or oppose candidates or measures voted on in only one county, or in more than one jurisdiction within one county.

"(d) A 'city general purpose committee' is a committee to support or oppose candidates or measures voted on in only one city."

Interpreting this statute, Regulation 18247.5, copy enclosed, provides that a general purpose committee will be considered a state, county or city committee based on the jurisdiction where more than 50 percent of its campaign contributions and expenditures are made. For example, if more than 50 percent of a committee's contributions and expenditures are at the state level, it is a state general purpose committee. If more than 50 percent of a committee's contributions and expenditures are at the county level, it is a county committee. And if more than 50 percent of a committee's activity is at the city level, it is a city committee.

To calculate whether 50 percent of a committee's campaign contributions and expenditures are made at the state, county or city level, the treasurer examines the candidates, measures and other committees to or on behalf of which the committee is making contributions to or expenditures (e.g., is the general purpose committee contributing more than 50 percent of its funds to *state* candidates and measures, or to *city* candidates and measures?). To make this calculation as required under Regulation 18247.5(c), a committee needs to know the jurisdictional status of the committee which is receiving its contributions.

In making the calculation, the committee may rely on the jurisdiction indicated on the receiving committee's most recently filed statement of organization (Form 410) at the time the contribution is made. Relying on the most recent statement of organization is an appropriate means of making the determination of the jurisdictional status of the committee receiving the contribution because it is easily verifiable and allows the contributing committee to plan its activity.

*2. Under subdivision (c), major donors and independent expenditure committees are required to perform calculations on a semi-annual basis to determine the appropriate filing jurisdiction. However, some major donors must file quarterly reports in odd-numbered years. Are major donors who must file such quarterly reports required to perform the calculations in subdivision (c) at the end of the quarterly reporting period to determine appropriate filing jurisdiction?*

Yes. Regulation 18247.5(c)(2) provides that major donors shall examine their contributions or expenditures made, on a semi-annual basis, to determine the appropriate jurisdiction for filing their semiannual reports. This is the general rule that applies to all major donors. Because major donors file campaign statements on Form 461 semiannually, on July 31 and January 31, they are required to check where 50 percent of their activity has been semiannually, at the close of the reporting period ending June 30 and December 31, corresponding with these filing deadlines.

As you note, however, a major donor may be required to file special odd-year quarterly reports under Section 84202.7. The purpose of Section 84202.7 is to provide timely information to the public concerning large contributions made to elected state officers during non-election years when those officeholders usually are required to file only semi-annual campaign reports. Special odd-year reports are required if the major donor makes contributions totaling \$10,000 or more to elected state officers, their controlled committees, or committees primarily formed to support or oppose any elected state officer, between January 1 and March 31, or between July 1 and September 30. The odd-year reports are due April 30 and October 31, respectively, and are filed on Form 461. The report includes all of the major donor's activity during the reporting period, not just contributions to elected state officers. To determine the appropriate filing jurisdiction for the quarterly report under Section 84202.7, a major donor making \$10,000 in contributions to elected state officers, their committees, or committees primarily formed to support or oppose them, must examine its year-to-date contributions and expenditures and file in the jurisdiction where more than 50 percent of its activity has been.

A similar situation may arise for major donors with city preelection reports. Section 84200.5(g) requires that a city general purpose committee that makes contributions or expenditures totaling \$500 or more during the period covered by the statement must file preelection statements. When a major donor is active in a city election being held in March or April, for example, the major donor will have to examine

its year-to-date contributions and expenditures to see whether more than 50 percent of its activity has been in the city, requiring the major donor to file city preelection reports under Section 84200.5(g)(2). (*Boling Advice Letter*, No. I-98-098.) This is consistent with what major donors had to do prior to enactment of Regulation 18247.5.

*3. For purposes of determining if a committee qualifies as a primarily formed committee, what constitutes “a group of candidates” and “two or more measures” under Regulation 18247.5(a)? If a committee spends over 70 percent of its funds on numerous candidates or measures in the same jurisdiction and on the same ballot, will it necessarily qualify as primarily formed committee?*

*If not, what is the threshold for becoming a primarily formed committee? For instance, if a county general purpose committee spends over 70 percent of its funds (in both the current two year period and the immediately preceding 24 months) on eight different county measures on the same ballot will it qualify as a primarily formed committee? What if it spends over 70 percent of its funds on six different county measures on the same ballot or ten measures?*

The language you are inquiring about in Regulation 18247.5(a) quotes from the Act. The Act defines a “primarily formed committee” in Section 82047.5 as follows:

“‘Primarily formed committee’ means a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose any of the following:

- (a) A single candidate.
- (b) A single measure.
- (c) A group of specific candidates being voted upon in the same city, county, or multicounty election.
- (d) Two or more measures being voted upon in the same city, county, multicounty, or state election.”

The definition of “primarily formed committee” was added to the Act in 1985 and was amended three times subsequently. Each amendment expanded the definition of what constitutes a primarily formed committee because the disclosure requirements for a primarily formed committee are more stringent than those for a general purpose committee.<sup>3</sup>

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<sup>3</sup> The legislative history of Section 82047.5 is summarized here. The definition of “primarily formed committee” was added to the Act in 1985, Ch. 1456, in SB 726. The legislation sponsored by Senator McCorquodale amended many sections of the Act, implementing a review of the Act’s performance in the decade since its passage in 1974. SB 726 added the definitions of “general purpose committee” and “primarily formed committee.” New Section 82047.5 read: “‘Primarily formed committee’ means a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose a single candidate or a single measure, or a group of specific candidates being voted upon in the same city or county election.”

Section 82047.5 was amended by Stats. 1990, Ch. 626 (SB 2795) sponsored by Senator Milton Marks, to expand the definition of primarily formed committee to include a committee which is formed or

Regarding a “primarily formed committee,” Regulation 18247.5(a) provides:

“(a) **Primarily Formed Committee.** For purposes of Section 82047.5, a recipient committee under Section 82013(a) is considered to be formed or existing primarily to support or oppose a candidate or measure if it makes more than 70 percent of its total contributions and expenditures, as calculated pursuant to subdivision (c), on any of the following:

(1) A single candidate. A committee formed or existing primarily to support or oppose a single candidate includes a committee that makes contributions and expenditures for a particular candidate and against that candidate’s opponent(s).

(2) A single measure.

(3) A group of specific candidates being voted upon in the same city, county, or multicounty election.

(4) Two or more measures being voted upon in the same city, county, multicounty, or state election.”

Under the statute and regulation, a county committee that spends over 70 percent of its funds on multiple candidates *and* measures on the same ballot is considered a general purpose committee, not a primarily formed committee.

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exists primarily to support or oppose two or more measures being voted upon in the same city or county election. As amended, Section 82047.5 read:

“‘Primarily formed committee’ means a committee pursuant to subdivision (a) of Section 82013 which is formed or exists primarily to support or oppose any of the following:

(a) A single candidate.

(b) A single measure.

(c) A group of specific candidates being voted upon in the same city or county election.

(d) Two or more measures being voted upon in the same city or county election.”

The definition was amended again by Stats. 1991, Ch. 191 (AB 602) sponsored by Assembly Member Chacon. This legislation included in the definition of primarily formed committee a committee which is formed or exists primarily to support or oppose two or more measures being voted upon in the same state election. Subdivision (d) of Section 82047.5 was thus amended to read: “(d) Two or more measures being voted upon in the same city, county, or state election.”

Finally, the definition of primarily formed committee was most recently amended by Stats. 1995, Ch. 295 (AB 1085) sponsored by Assembly Member Martinez. The legislation expanded the definition of a primarily formed committee to include any committee formed to support or oppose either a group of candidates in the same multi-county election, or two or more measures being voted upon in the same multi-county election. This amendment was Commission-sponsored legislation intended to close a technical loophole in the law that allowed committees formed for multi-county elections to file as general purpose committees, which have less stringent disclosure requirements than primarily formed committees. The amendment was designed to result in greater public disclosure of the activities of committees formed for multi-county elections, such as a committee formed to support Bay Area Rapid Transit District (BART) board candidates. The legislation added “multicounty” elections to subdivisions (c) and (d), resulting in the current Section 82047.5.

With respect to ballot measures, Section 82047.5 subdivisions (a) and (d) define a primarily formed committee to include “a committee . . . which is formed or exists primarily to support or oppose . . . [a] single measure” or “[t]wo or more measures being voted upon in the same city, county, multicounty, or state election.” Accordingly, a county committee that spends over 70 percent of its funds in the time period in Regulation 18247.5(c) on two or more measures on the same ballot (or six, eight, or ten measures on the same ballot as in your example), is considered a primarily formed committee. (See Chapter 1 of Campaign Manual 3, May 2007.) In contrast, a committee that spends over 70 percent of its funds in the relevant time period to support or oppose ballot measures in *more* than one election, or in *more* than one jurisdiction, is a general purpose committee.

With respect to what constitutes “a group of candidates,” Section 82047.5(c) provides that a committee is primarily formed if it exists primarily to support or oppose “[a] group of specific candidates being voted upon in the same city, county, or multicounty election.” Under the statute and regulation, a committee that spends over 70 percent of its funds during the relevant time period on multiple candidates being voted upon in the same *city, county, or multicounty* election is considered a primarily formed committee. (Note, however, that a committee must spend over 70 percent of its funds on *one state candidate* on the ballot to be primarily formed. If a committee spends over 70 percent of its funds on *multiple state candidates* on the same ballot, it is considered a general purpose committee, not a primarily formed committee.)

4. *Where should a committee file copies of its Form 410 amendments when it changes its jurisdictional status?*

Regarding amending a committee’s statement of organization, Section 84103 provides as follows:

“(a) Whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within 10 days to reflect the change. The committee shall file the original of the amendment with the Secretary of State and shall also file a copy of the amendment with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.”

In addition, if there is a change in key information – the name of the committee, the name of the treasurer or other principal officers, or the name of the controlling candidate or committee – during the 16 days before an election, the committee must send notice within 24 hours by fax, online or by overnight or personal delivery, to the filing officer with whom it files the originals of its campaign reports. (Section 84103(b).)

You ask where to file a statement of organization amendment for a committee whose jurisdictional status has changed. Under Section 84103, a committee must always file an amendment to its statement of organization, Form 410, with the Secretary of State. In addition, the committee must file a copy of its Form 410 amendment with the new jurisdiction where it will be required to file originals of its campaign reports. Although not required by the Act, a committee that changes jurisdictional status may wish to file a courtesy copy of its Form 410 amendment with the filing officer in its former jurisdiction to inform the filing officer of the change.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

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General Counsel

By: Hyla P. Wagner  
Senior Counsel, Legal Division

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Enclosure