



FAIR POLITICAL PRACTICES COMMISSION

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March 24, 2010

Stephen J. Kaufman
Kaufman Legal Group
c/o Level the Playing Field 2010 and Charles Shumaker, Treasurer

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RE: Advisory Letter ✓
FPPC Case No. 100083; Level the Playing Field 2010 and Charles Shumaker, Treasurer

Dear Mr. Kaufman:

The Fair Political Practices Commission (the "FPPC")¹ has received your letter providing explanations and copies of filings in response to the complaint received by the FPPC's Enforcement Division on February 18, 2010, directed at your client, Level the Playing Field 2010 (the "committee").

The complaint primarily contained two allegations. One is that the committee should more appropriately be designated as a primarily formed committee rather than a general purpose recipient committee. (Gov. Code §§ 82027.5 and 82047.5.) A recipient committee under Section 82013(a) is considered to be formed or existing primarily to support or oppose a candidate if it makes more than 70 percent of its total contributions and expenditures for a particular candidate and against that candidate's opponent. (Regulation 18247.5.) New committees, formed within six months of an election in connection with which the committee makes contributions and expenditures, will calculate these percentages at the end of each month.

The committee qualified on February 5, 2010. If, at the end of February 2010, the committee spent over 70 percent of its total contributions and expenditures opposing gubernatorial candidate Meg Whitman, then, as specified in Regulation 18247.5(c), the committee became a primarily formed committee and its reporting and identification obligations changed from those of a general purpose committee. The committee would also be required to amend its Form 410 within 10 days of qualifying as a different type of committee. (Section 84103.)

¹ The Fair Political Practices Commission (the "FPPC") enforces the provisions of the Political Reform Act (the "Act"),¹ found in Government Code Section 81000, et seq.

As stated in your letter and evidenced by the committee's subsequent filings, although the committee initially filed as a general purpose committee on February 5, 2010, it amended its Statement of Organization to change its status as a primarily formed recipient committee on February 23, 2010, before the March 10, 2010, deadline established by Regulation 18247.5.

The second allegation contained in the complaint is whether or not the committee is a sponsored committee. Section 84101 requires that a committee's statement of organization and the committee's name itself must include the name of the committee's sponsor if one exists. A committee is sponsored if, among other things, the committee receives 80 percent or more of its contributions from the sponsor, its members, officers, employees or affiliates. (Gov. Code § 82048.7.) Committees with more than one sponsor must reveal in their name the industry or group, if any, of which the sponsors are a part. (*Pritchard* Advice Letter, No. A-93-483.) You state in your letter of explanation that, once the committee's primary contributors became labor unions, the committee amended its Statement of Organization to include these unions as sponsors. This satisfies the requirements of Section 84101.

Inherent in both the concepts of a sponsored committee and a committee's status as primarily formed is a certain fluidity of status. If the committee's primary contributors or its primary focus shifts after the election, then the committee may be required to further amend its Statement of Organization.

A third allegation was not addressed in our initial letter to the committee requiring explanations and possible amended filings and that is the allegation of the committee's possible coordination with gubernatorial candidate Attorney General Jerry Brown. We did not address this issue because there was insufficient evidence in the complaint, and continues to be insufficient evidence despite subsequent additional information provided by the complainant, to support this allegation. An expenditure is not made at the behest of a candidate or committee merely when the committee making the expenditure is responding to a general, non-specific request for support by a candidate or committee, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure. (Regulation 18225.7 (d)(4).)

The additional information given to the Enforcement Division was a link to a video of gubernatorial candidate Jerry Brown speaking to the California Delegation of the Laborers' International Union of North America. The part of the video at issue is Attorney General Brown saying, "We are going to attack whenever we can. But I would rather have you attack. I would rather be the nice guy in this race." Regulation 18225.7 (d)(4), cited above, provides safe harbor to a candidate who, in a non-specific way, asks for support. Generally, there are two ways to support a candidate and one of them is to attack the candidate's opponent. As written in the regulation, the safe harbor of Regulation 18225.7 (d)(4) is lost if the candidate, prior to the expenditure, discussed details of the proposed expenditure. Requesting that audience members attack his opponent does not rise to the level of providing "detail" regarding a future communication for purposes of Regulation 18225.7 (d)(4). Further, a supporter of a candidate does not have her ability to make an independent expenditure stripped away merely because she was an audience member at an event where the candidate exhorted her to support him.

If you need forms or a manual, or guidance regarding your obligations, please call the FPPC's Toll-Free Advice Line at 1-866-275-3772 and our website at www.fppe.ca.gov. If you have questions regarding this matter, please contact me at (916) 322-8241.

Sincerely,

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Adrienne Korchmaros
Political Reform Consultant
Enforcement Division

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cc: Thomas W. Hiltachk