BEFORE THE FAIR POLITICAL PRACTICES COMMISSION

In the Matter of:	)	
	)	
Opinion requested by:	)	No. 79-002
Vigo G. Nielsen, Jr.,	)	May 1, 1979
Dobbs & Nielsen	)	
	)	

BY THE COMMISSION: We have been asked the following question by Vigo G. Nielsen, Jr., an attorney representing six tobacco companies and concerns:

Does a major donor committee that makes in-kind contributions to a recipient committee have to report the name, address and salary of the employees whose services constituted the in-kind contribution?

CONCLUSION

The major donor committee making the contribution is not required to report the name, address and salary of the employees whose services constitute an in-kind contribution if the employees are regular employees of the major donor committee. However, the contribution must be reported as a payment to the recipient.

FACTS

Mr. Nielsen represents Lorillard; R. J. Reynolds Tobacco Company; Liggett & Myers Tobacco Company; Philip Morris, Inc.; Brown & Williamson Tobacco Corporation; and The Tobacco Institute ("entities"). Each of these entities is a major donor committee under Government Code Section 82013(c). Each of the entities, in order to oppose the passage of Proposition 5 on the November 7, 1978, ballot, directed its employees to assist the campaign efforts of Californians for Common Sense ("CCS"). All of the entities had employees who spent sufficient time opposing the passage of Proposition 5 so that the value of their time constitutes an in-kind contribution to CCS.[1] A review of the campaign statements filed through December 31, 1978, by the six entities reflects that a total of $180,828 was spent for salaries

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[1] 2 Cal. Adm. Code Section 18423. See analysis, *infra*.

of personnel.[2] The entities reported the payments for the employee salaries. With the exception of R. J. Reynolds Tobacco Company, the entities disclosed the amount of the expenditures for personnel and a notation that the expenditures were for employee salaries, but did not disclose the names of employees and the salary each was paid. R. J. Reynolds did disclose the number of working days and employees for the salary reported, i.e., on the campaign statement covering the period from 3/11 to 6/30/78, the entry read $4,310 for salaries for "four individuals for 1-8 days per person." The disclosure on the entities' campaign statements does not reflect the fact that the payment was a contribution to CCS.

Campaign statements filed by CCS covering the period through December 31, 1978, reflect numerous in-kind contributions from the five entities for "salaries, travel expenses (meals, lodging, airfare) of personnel." There is no additional breakdown disclosing the portion of the in-kind contributions that was for salaries of personnel. There is also no information concerning the amount of salary and names and addresses of the personnel whose services were included in those in-kind contributions.

ANALYSIS

The Political Reform Act ("Act") requires that specific information be disclosed concerning expenditures made by committees. Under Government Code Section 84210(h),[3] a committee is required to report, among other things, the full name and street address of each person to whom an expenditure or expenditures totaling $50[4] has been made, together with the amount of each separate expenditure to each person

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[2] The breakdown of the $180,828 is as follows:

Brown & Williamson.....	$ 1,681
Liggett & Meyers Tobacco Company....	$ 7,043
Lorillard.....	$40,362
Philip Morris, Inc.	$44,614
R. J. Reynolds Tobacco Company.....	$34,303
The Tobacco Institute.....	$52,825

[3] All statutory references are to the Government Code unless otherwise noted.

[4] The facts of the opinion arose prior to January 1, 1979, the effective date of legislation changing the itemization threshold from $50 to $100. See Section 84210(g) and (h).

during the period covered by the campaign statement; a brief description of the consideration; and the full name and street address of the person providing the consideration for which any expenditure was made if different from the payee.

The payment of salary to a person rendering services to a committee is an in-kind contribution to the committee if full and adequate consideration is not received in return. Section 82015. Such a payment is also an expenditure by the person making the salary payment. Section 82025. By regulation, 2 Cal. Adm. Code Section 18423, the Commission has required that an employee must spend more than 10 percent of his or her compensated time in a calendar month performing campaign services for or at the behest of a committee before the employer makes an expenditure and/or contribution of that employee's services. Therefore, when an employee is allowed to work more than 10 percent of his or her compensated time in a calendar month for or at the behest of a committee, the employer has made an in-kind contribution and an expenditure of services with a value equal to the employee's salary.[5/]

When a committee makes an expenditure, it is usually required, under Section 84210(h), to report, among other things, the full name and street address of each person to whom an expenditure or expenditures totaling $50 or more has been made and the full name and street address of the person providing the consideration for any expenditure if that person is different from the payee. In the usual circumstance, the "person to whom an expenditure ... has been made" is the person who actually received the monetary payment--in this case, the employee. However, Section 84210(h) is ambiguous as to how to report an expenditure, such as the one at issue here, that is also an in-kind contribution. The person or committee receiving the contribution is also the "person to

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[5/] 2 Cal. Adm. Code Section 18423 excepts certain salary payments from inclusion as expenditures. Under 2 Cal. Adm. Code Section 18423(a)(2), the employer does not make an expenditure if the "employee engages in political activity on bona fide, although compensable, vacation time or pursuant to a uniform policy allowing employees to engage in political activity." There is nothing in the facts presented by this opinion to suggest that the entities have such a uniform policy or that their employees performed the services in question while on vacation.

whom an expenditure ... has been made."[6/] Given the ambiguity, it would be reasonable to conclude that the Act contemplated that the names of both the recipient of the in-kind contribution and the employee would be reported. But it would also be reasonable to conclude that the Act contemplated that in those situations where the name of the recipient of an in-kind contribution must be reported, it would not be necessary for the major donor committee to disclose the name of the employee.

In situations such as this, we must look to the purposes of the Act in resolving ambiguities. One clear purpose of the Act is to ensure full and truthful disclosure of campaign receipts and expenditures so that the voters may be fully informed. Section 81002(a). In Buckley v. Valeo, 424 U.S. 1 (1976), the United States Supreme Court delineated several of the underlying purposes of the campaign disclosure requirements of the Federal Election Campaign Act--an act which closely parallels our own Act. The Court found that among the major purposes of requiring disclosure of contributors' names were to "allow[s] voters to place each candidate in the political spectrum more precisely than is often possible solely on the basis of party labels and campaign speeches" and to "alert the voter to the interests to which a candidate is most likely to be responsive and thus facilitate predictions of future performance in office." 424 U.S. at 67.

Requiring the disclosure of names of the employees of major donors would not, in most instances, serve any of these purposes. No inference may be drawn about a candidate or ballot measure since, by participating in campaigns, employees of major donor committees may not be demonstrating any personal commitment to, or support of, a candidate or ballot measure, but rather are merely carrying out their employer's instructions. Thus, while disclosure of the major donor's identity would clearly serve the purposes of the Act, disclosure of the individual employees' names would provide little additional information to the voters. The situation would be different, of course, if the employees had specifically applied, and had been hired, to engage in political campaign activities. In that case, disclosure

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6/ In the case of "independent expenditures" made by a major donor, no ambiguity exists as to the "person to whom an expenditure ... has been made." Consequently, where independent expenditures are involved, Section 84210(h) requires reporting of the name, address and salary of employees to whom payments are made.

of employees' names might well assist voters in placing the candidate or ballot measure in the political spectrum and in identifying individuals to whom a candidate is more likely to be responsive once in office.

Another factor we must consider in resolving the ambiguity of Section 84210(h) is that the disclosure of the names, addresses and salaries may affect the privacy interests of the major donor employees. Before such interests are affected, we must ensure that requiring disclosure of the employees' names, addresses and salaries will truly promote the purposes of the Act.

These considerations lead us to conclude that in the case where a major donor committee makes an in-kind contribution of employees' services, the purposes of the Act are best served by disclosure of the amount of money spent, the time involved and the fact that the employees' services were a contribution to the recipient committee.

In conclusion, pursuant to Section 84210(h), the entities must report the expenditure for the employees' services as a payment to CCS and include a description of the consideration. The description of the consideration should state the number of employees and days on which the employees performed campaign services for CCS. Under 2 Cal. Adm. Code Section 18423, only those employees who spend more than 10 percent of their compensated time performing campaign services will be includable.[7/] Full disclosure, including the names, addresses and salaries of the employees, would have to be made only if the entities had specifically hired individuals to work on the campaign.

7/ However, once an employee exceeds 10 percent of his or her time on campaign activities, all of the time must be reported, not just the portion exceeding 10 percent.

Adopted by the Commission on May 1, 1979. Concurring: Houston, Lapan, Quinn and Remcho. Commissioner McAndrews dissented.

Tom K Houston

Tom K. Houston
Chairman