

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations.)

§ 18217. Nonprofit Organization as Controlled Committee.

(a) A nonprofit organization, as defined in subdivision (f), shall be considered a controlled committee, if both of the following apply:

(1) A candidate, his or her agent, or any committee he or she controls, exercises significant influence over the actions and decisions of the organization, or acts jointly with the organization in connection with the making of expenditures.

(2) The organization qualifies as a committee under Section 82013(a), and the organization is operated for political purposes. For purposes of this regulation, an organization is “operated for political purposes” if either of the following applies:

(A) The organization receives or expends funds 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 the qualification or passage of any measure.

(B) The organization makes contributions to candidates or their controlled committees.

(b) For purposes of subdivision (a)(1), a nonprofit organization which is tax-exempt under section 501 of the Internal Revenue Code, and which is not an organization described in section 527 of the Internal Revenue Code, is presumed not to be significantly influenced by a candidate, his or her agent, or any committee he or she controls, if the organization complies with all of the factors set forth below:

(1) The candidate is not substantially involved in the day-to-day operations of the organization, and the organization is controlled by a board of directors with 3 or more members, two-thirds of whom are not:

(A) Candidates;

(B) Agents, campaign staff, employees, or persons otherwise under the control of a candidate; or

(C) Brothers, sisters, parents, children, spouses, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, mothers-in-law or fathers-in-law of a board member who is a candidate.

(2) The name of the organization does not include the name of the candidate. For purposes of this subdivision (b)(2) the term “name of the candidate” means the candidate's first and last name or some other unambiguous reference to the candidate.

(c) For purposes of subdivision (a)(2), a nonprofit organization which is tax-exempt under section 501 of the Internal Revenue Code, and which is not an organization described in section 527 of the Internal Revenue Code, is presumed not to be operated for political purposes if the organization complies with all of the factors set forth below:

(1) The organization does not make contributions to candidates.

(2) The name of the organization does not include the name of the candidate. For purposes of this subdivision (c)(2) the term “name of the candidate” means the candidate's first and last name or some other unambiguous reference to the candidate.

(3) The organization does not spend funds in excess of the amount permitted under section 501(h) of the Internal Revenue Code to influence or attempt to influence legislative action.

(4) The organization does not spend funds to influence or attempt to influence the qualification or passage of any measure in an amount sufficient to qualify the organization as a committee under section 82013 of the Government Code.

(5) This subdivision (c) shall not be construed to prevent the organization from forming a separate and independent political committee which is not controlled by any person described in subdivision (b)(1)(A)-(C).

(d) The presumptions set forth in subdivisions (b) and (c) can be rebutted by clear and convincing evidence that, notwithstanding compliance with all of the factors set forth in subdivisions (b) and (c), the organization is controlled by a candidate and operated for political purposes.

(e) A person who makes a donation to a nonprofit organization which is tax-exempt under section 501 of the Internal Revenue Code, and which is not an organization described in section 527 of the Internal Revenue Code, in reliance upon the organization's tax-exempt status, is not making a contribution unless the person knows or has reason to know that the organization is operated for political purposes.

(f) For purposes of this regulation, “nonprofit organization” means an organization which is characterized as an exempt organization under section 501 of the Internal Revenue Code, but which is not an organization formed or existing primarily for political purposes.

Note: Authority cited: Section 83112, Government Code. Reference: Section 82016, Government Code.

HISTORY

1. New section filed 8-31-90; operative 9-30-90 (Register 90, No. 43).

2. Amendment of subsection (a)(2) filed 7-22-2019; operative 8-21-2019 pursuant to Cal. Code Regs., tit. 2, section 18312(e). Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2019, No. 30).