

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

§ 18225.7. Made at the Behest; Independent versus Coordinated Expenditures.

(a) Application.

(1) The term “made at the behest” is used in four contexts in the Act: (i) for “contributions” and “expenditures” defined in Sections 82015 and 82025; (ii) for “independent expenditures” defined in Sections 82031 and 85500, to differentiate between expenditures that are made in coordination with a candidate or committee versus those that are made by a person independent of the candidate or committee; (iii) for “behested payments” reports filed by an elected officer or a Public Utilities Commissioner who solicits funds for charitable, legislative or governmental purposes as specified in Section 82015(b)(2)(B); and (iv) for communications identifying a state candidate as specified in Section 85310.

(2) The definition of “made at the behest” in subdivision (b) applies to all uses of that term in the Act. The provisions in subdivisions (c)-(g) apply for coordinated expenditures. Refer to Regulation 18215.3 for rules on reporting payments elected officers and Public Utilities Commissioners solicit for charitable, legislative or governmental purposes.

(b) Made at the Behest. “Made at the behest” of a candidate or committee means made under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of the candidate or committee. Throughout this regulation, the terms “candidate” and “committee” include their agents, when the agent is acting within the scope of his or her authority.

(c) Independent vs Coordinated Expenditures. For purposes of Sections 82031, 85500 and 85310, an expenditure is made at the behest of a candidate or committee, and is not

considered independent, if the expenditure funds a communication that is made under any of the following circumstances:

(1) General Coordination. The expenditure is made at the request, suggestion, or direction of, or in cooperation, arrangement, consultation, concert or coordination with, the candidate or committee on whose behalf, or for whose benefit the expenditure is made. To be considered coordinated, such prearrangement must occur prior to the making of a communication.

(2) Involvement in Communication. The expenditure funds a communication that is created, produced or disseminated either:

(A) After the candidate or committee has made or participated in making any decision regarding the content, timing, location, mode, intended audience, volume of distribution, or frequency of placing the communication; or

(B) After discussion between a creator, producer, or distributor of a communication, or the person paying for that communication, and the candidate or committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placing that communication.

(d) Expenditures Presumed to be Coordinated/Made at the Behest. For purposes of subdivision (c) of this regulation, there is a rebuttable presumption that an expenditure funding a communication is made at the behest of a candidate or committee and not independent of the candidate or committee on whose behalf, or for whose benefit, the expenditure is made, under any of the following circumstances:

(1) Campaign Needs. The expenditure is based on information about the candidate's or committee's campaign needs or plans that the candidate or committee provided to the expending

person directly or indirectly, such as information concerning campaign messaging, planned expenditures or polling data.

(2) Agent. The expenditure is made by or through any agent of the candidate or committee in the course of the agent's involvement in the current campaign. For purposes of this regulation, the “current campaign” means (i) for a candidate, the period beginning 12 months prior to the date of the primary or special election in which the candidate is on the ballot for an elective office and ending on the date of the general or special runoff election for that office; or (ii) for a measure, 12 months prior to the date of the election in which the measure is on the ballot.

(3) Common Consultants. The person making the expenditure for a communication relating to a clearly identified candidate or ballot measure retains the services of a person who provides either the candidate or the committee supporting or opposing the ballot measure with professional services related to campaign or fundraising strategy for the current campaign.

(4) Republication. The communication relating to a clearly identified candidate or ballot measure replicates, reproduces, republishes or disseminates, in whole or in substantial part, a communication, including video footage, designed, produced, paid for or distributed by the candidate or committee.

(5) Fundraising. The committee making the expenditure is primarily formed to support the candidate or oppose their opponent and in the course of the current campaign, the candidate who benefits from the expenditure solicits funds for or appears as a speaker at a fundraiser for the committee making the expenditure, thereby participating in the committee's fundraising strategy.

(6) Former Staff. The person making the expenditure is established, run, or staffed in a leadership role, by an individual who previously worked in a senior position or advisory capacity on the candidate's or officeholder's staff within the current campaign in which the expenditure is made.

(7) Candidate's Family. The person making the expenditure is established, run, staffed in a leadership role, or principally funded by an individual who is an immediate family member of the candidate.

(e) Expenditures Not Considered Coordinated/Made at the Behest. An expenditure is not considered to be coordinated or made at the behest of a candidate or committee based solely on any of the following circumstances:

(1) Interview. A person interviews a candidate on issues affecting the person making the expenditure.

(2) Photograph or Press Release. The person making the expenditure has obtained a photograph, biography, position paper or press release from the candidate or the candidate's agents.

(3) Prior Contribution. The person making the expenditure has made a contribution to the candidate or committee.

(4) General Request for Support. The person 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.

(5) Meeting with Members or Employees. The person making the expenditures has invited the candidate or committee to make an appearance before the person's members,

employees, shareholders, or the families thereof, provided that there is no discussion with the candidate or committee prior to the expenditure relating to details of the expenditure.

(6) Informed after the Fact. A person informs a candidate or committee that the person has made an expenditure, provided that there is no other exchange of information, not otherwise available to the public, relating to details of the expenditure.

(7) Expenditure Benefits Another Candidate or Committee. An expenditure is made at the request or suggestion of the candidate or committee for the benefit of another candidate or committee.

(8) Hyperlink. The communication includes a hyperlink to the Internet website or other social media page of a candidate or measure committee.

(f) Certain Committee Communications. Notwithstanding any other provision of this regulation, if two or more committees exchange information between or among themselves, subsequent expenditures by each committee are not, merely by reason of that exchange, considered to be coordinated with or “made at the behest” of the other committee(s), where the committees are (i) all general purpose committees, (ii) all committees primarily formed to support or oppose the same candidate or candidates, or (iii) all committees primarily formed to support or oppose the same measure or measures.

(g) Coordinated Expenditures are Treated as Contributions. An expenditure that is made at the behest of or in coordination with a candidate or committee, is considered a contribution to the candidate or committee, unless it is otherwise exempted from the definition of “contribution” by any provision of the Act or its regulations.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 82015, 82025, 82031, 85310 and 85500, Government Code.

HISTORY

1. New section filed 11-7-95; operative 11-7-95 pursuant to Government Code section 11343.4(d) (Register 95, No. 45).
2. Amendment of section and Note filed 4-9-2003; operative 4-9-2003 pursuant to Government Code section 11343.4 (Register 2003, No. 15).
3. Amendment of section heading, section and Note filed 11-9-2015; operative 12-9-2015, pursuant to Title 2, section 18312(e), of the California Code of Regulations. Submitted to OAL for filing and printing only 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 2015, No. 46).