

State of California



Fair Political Practices Commission

P.O. BOX 807 • SACRAMENTO, 95804 ••• 1100 K STREET BUILDING, SACRAMENTO, 95814

July 12, 1976

Mark S. Windisch  
1901 Avenue of the Stars, Suite 1400  
Los Angeles CA 90067

A76-07-050

Dear Mr. Windisch:

This letter responds to the questions posed in your letter of June 28, 1976, regarding campaign reporting obligations of an Association and its Political Action Committee ("PAC"). Rather than repeat the facts and each of the questions, I will merely respond to your questions in order, basing each response on the information set forth in your letter.

(1) The current Association - PAC treatment of overhead and other expenses is correct. The Commission has determined that the term "expenditure" does not include the "regular on-going business overhead which will be incurred in similar amounts regardless of the expenditure." 2 Cal. Adm. Code §18225(c)(3)(A). Although the same wording has not expressly been included in the contribution regulation, we believe that the provision of Section 18225 reflects the Commission's intent and applies to the reporting of contributions as well.

(2) Yes, the Association must file a Form 460 on the dates set forth in Gov. Code §84206.<sup>1/</sup> Thus, if the Association makes contributions of \$500 or more during the first half of the year, the Association should file a campaign statement during July. If the \$500 level is exceeded during the second half of the year, the Association should file a campaign statement between January 1 and January 31, 1977. The unfortunate catch in this filing requirement is that under the literal language of the Act, the period covered by the Association's first campaign statement will be the entire period since the Act took effect on January 7, 1975. See §82046. Pending legislation would remedy this oversight and would limit the period covered to the current calendar year. We anticipate that the Legislature will take final action on proposed change before September 1, 1976.

(3) The Association would not be a committee under either §82013(b) or 82013(c).

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<sup>1/</sup> Statutory references are to the Government Code unless otherwise indicated.

(4) If an Association member knows or has reason to know that all or part of the member's dues will be used to make contributions, the Association should record a portion of the dues as contributions received. If the amount of such contributions equals or exceeds \$500 in a calendar year, the Association is a committee as defined in §82013(a), i.e., the member does not have to know that the Association will make \$500 or more in contributions. The important fact is whether the member knows that some portion of that member's dues will be used to make contributions. If so, the Association is deemed to be a committee under §82013(a) when it actually utilizes those receipts and makes \$500 or more in contributions.

(5) Yes, monetary and non-monetary contributions financed from members' dues payments should be aggregated to determine whether the Association is a committee under Section 82013(a).

(6) Yes, the Association may file a Form 450 unless any member's pro rata share of the contributions made is \$50 or more, or any member contributed \$50 or more specifically designated as a payment to support the PAC or to be used for making contributions and expenditures.

(7) As stated in my response to question (4), the important fact is whether a member knows or has reason to know that some of the dues will be used to make contributions. If the members have such knowledge, the Association will become a "committee" when contributions of \$500 or more are made and the answer to your question is yes.

(8) & (9) The Association may continue to hire a registered lobbyist, but the lobbyist cannot make, or act as an agent or intermediary in the making or arrange for the making of any campaign contributions. §86202. Thus, the lobbyist should not participate in Association activities involving the support of the PAC. Also, remember to report contributions made by the Association on the lobbyist employer form, Form 620.

(10) Proceeds from a sale are not contributions unless the sale is held specifically to raise money for political purposes, in which case the purchaser will know or have reason to know that part of the purchase price will be used to make expenditures and contributions. See 2 Cal. Adm. Code §18215(d). If the sale is held for such political purposes, the Commission currently is considering whether profits from a sale are contributions or whether they are not contributions because the purchaser receives full and adequate consideration.

However, if the sale is not held for political purposes but is merely a standard trade show or other commercial venture, the proceeds are not contributions. In this situation, the answers to questions (4), (5) and (7) are different. The Association will not become a committee under §82013(a) but may qualify as a committee under §82013(b) or (c).

(11) There is a difference of opinion on the staff as to the appropriate response to this question and thus I will not answer it until prodded.

(12) Over the past 4-5 years, the Association has accumulated a budget surplus of \$6,000 consisting of dues collected from 150 members and a number of other sources. If the Association transfers this surplus to the PAC, it will be a "major donor" committee, §82013(c), but will not be a committee under §82013(a).

The above information differs in some respects from the information I related to you in our telephone conversation of July 8, 1976. If these additional comments create any confusion, don't hesitate to call me. I hope this information will be of assistance.

Sincerely,



Natalie E. West,  
Staff Counsel

NEW:pvp

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June 28, 1976

Fair Political Practices Commission  
107 South Broadway, Room 2140-A  
Los Angeles, California 90012

Attention: Mr. John C. Greenwood

Re: Interpretation of Government Code,  
§ 82013 and 2 California Administrative  
Code, §§ 18215, 18225

Dear Mr. Greenwood:

This law firm represents several entities which have filing duties under the California Political Reform Act. In attempting to delineate those duties, we have developed some questions as to the application of § 82013 of the Government Code and 2 California Administrative Code, §§ 18215 and 18225, in the following fact situation:

An Association employing a registered lobbyist, and filing all periodic reports incidental thereto, is closely related to a Political Action Committee ("PAC"). The PAC files all reports required of it under Proposition Nine.

The PAC has no employees of its own; therefore, employees of the Association do the bookkeeping of the PAC as well as completing and filing the periodic Campaign Statements of the PAC. These employees perform no other services for the PAC other than such clerical endeavors and activities incidental thereto.

In the past the Association has not charged the PAC for the aforementioned employee services. Rather, both the Association and the PAC have reported the services as in-kind contributions from the former to the latter.

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In the past clearly identifiable and differential overhead expenses incurred by the Association on behalf of the PAC (e.g. long distance telephone calls and specific PAC mailings) have been paid for by the Association and treated as in-kind contributions in a similar manner to employee services. Other non-differential overhead costs (e.g. use of desks, lights, local telephone calls, mailings which mentioned the PAC but primarily dealt with the Association) have not been treated as contributions at all.

The Association has expended no sums on behalf of the PAC except for the employee services and differential overhead costs described above. Further, the Association has never made an outright cash contribution to the PAC, or a contribution of any kind to any other committee, candidate or ballot measure.

The amount of in-kind contributions this year from the Association to the PAC is not in excess of \$500.00. However, it is expected that the \$500.00 level might be reached if the situation described above continues without change.

Our questions are:

- (1) Is the current Association-PAC treatment of overhead and other expenses correct under the Political Reform Act? More specifically, are non-differential overhead expenses (i.e., expenses which the Association would have incurred anyway) in-kind contributions or expenditures under §§ 18215 and 18225 merely because the PAC gains some benefit from the payment of the expense by the Association?
- (2) If the level of in-kind contributions from the Association to the PAC exceeds \$500.00 in one year, is the Association required to file Form 460? If the answer

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is yes, when would Form 460 have to be filed initially and how often would it have to be filed? Would filing responsibilities continue into subsequent years or would the \$500.00 level have to be reached in each such year in order for the filing of Form 460 to be required?

- (3) If the level of in-kind contributions from the Association to the PAC is cut off at \$499.00, and the Association then makes a cash contribution to the PAC in an amount less than \$5,000.00, (which cash presumably would be used by the PAC to pay the Association for services and goods, thus eliminating further in-kind contributions) would the Association be a committee under either § 82013(b) or (c)?
- (4) If the Association collects dues from its members and a general expectation exists in both the Association and its members that more than \$500.00 of all such dues received during that year will be used during that same year for in-kind contributions to the PAC, is the Association a "committee" under § 82013(a)?
- (5) If the Association collects dues from its members and a general expectation exists in both the Association and the members that (1) \$499.00 of all such dues received during that year will be used during that same year for in-kind contributions to the PAC, and (2) an amount of cash less than \$5,000.00, all or some of which is dues payments received from said members, will be given directly by the Association to the PAC during that year, is the Association a "committee" under § 82013(a)?
- (6) If the answer to (5) is yes, and no one member of the Association has contributed more than \$49.00 (pro-rata) during that year toward the in-kind and cash contributions made by the Association to the PAC that same year, may the Association make its filings on Form 450 instead of Form 420?

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- (7) If the Association collects dues from its members, there being no expectation on anybody's part that more than \$500.00 of all such dues received that year will be used for in-kind contributions to the PAC that same year, but in fact, \$501.00 of in-kind contributions are made by the Association to the PAC during the year, is the Association a "committee" under § 82013(a)?
- (8) If the answer to either (4), (5) or (7) is yes, can the Association continue to employ a registered lobbyist?
- (9) If required to file Form 460, can the Association continue to employ a registered lobbyist?
- (10) If the source of the funds ultimately contributed to the PAC in (4), (5) and (7) above is not membership dues, but rather, solely is the profits from a trade, show or sale of books where full consideration has clearly been given by the Association in obtaining such funds, does a different answer result in either (4), (5) or (7)?
- (11) If the answer to (10) is yes, do such profits have to be segregated from other Association funds in order to retain their character as funds which do not give rise to § 82013(a) filing requirements in (4), (5) and (7)?
- (12) If the Association has accumulated \$10,000.00 in funds over a period of the past five years, and the source of such funds is both membership dues from 400 members and profits from trade shows, seminars, and other sales, all of which funds have been commingled over the five-year period, and the Association gives the \$10,000.00 to the PAC, does the Association have any filing requirements other than those under § 82013(c)?

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Should you have any questions regarding the foregoing,  
please advise.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Mark S. Windisch".

Mark S. Windisch

MSW:bt