



FAIR POLITICAL PRACTICES COMMISSION

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June 19, 2007

Charles H. Bell, Jr.
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RE: Your Request for Informal Assistance
Our File No. I-06-071a

Dear Mr. Bell:

This letter is a further response to your inquiries last year regarding the campaign provisions of the Political Reform Act (the "Act").¹ Your request originally sought a Commission Opinion or written advice under Section 83114. We responded with the *Bell* Advice Letter, No. I-06-071. At its public meeting on May 10, 2007, the Commission directed staff to answer a series of questions left unanswered in the original letter. Because those questions are hypothetical in nature and make no reference to specific facts or circumstances, we provide you with informal written assistance.²

QUESTIONS

The eleven subparts of Question 2 in your letter of April 19, 2006 asked us to specify which costs in a series of examples (listed below) were "fundraising expenses" of a sponsored committee potentially subject to the contribution limits of Section 85303.

ANALYSIS

All costs described in Question 2 are connected to fundraising in some fashion. Your inquiry is best approached by asking which of the costs associated with the various activities would be exempted from classification as "contributions" under Regulation 18215(c)(16), if paid by a sponsor. This is the approach taken in your own analysis of these questions.

¹ Government Code sections 81000 – 91014. Commission regulations appear at Title 2, Sections 18109-18997, of the California Code of Regulations.

² Informal assistance does not offer the immunity provided by a Commission opinion or formal written advice. (Regulation 18329(c)(3).)

Regulation 18215 clarifies the Act's definition of the term "contribution," which is given at Section 82015. Subdivision (c) of Regulation 18215 contains a list of sixteen kinds of payments that are not deemed to be "contributions" within the meaning of the Act. Subdivision (c)(16) excludes:

"A payment by a sponsoring organization for the establishment and administration of a sponsored committee, provided such payments are reported. Any monetary payment made under this subdivision to the sponsored committee shall be made by separate instrument. A "sponsoring organization" may be any person (see Gov't Code § 82047) except a candidate or other individual (see Gov't Code § 82048.7). "Establishment and administration" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, and other expenses incurred in setting up and running a sponsored committee."

The purpose of this regulation is to *exclude* sponsors' payments for establishment and administration of their sponsored committees from classification as "contributions."

There are necessarily limits on our ability to identify abstract categories of payments exempt in any and all cases from treatment as "costs of administration" within the meaning of Regulation 18215(c)(16). The advice we offer here is general guidance. We must caution that exceptional circumstances could be grounds for different conclusions in particular cases.

The following are your questions on the costs associated with various activities of a hypothetical sponsored committee, in the order presented, and our response to each:

Questions 1 – 3

1. Staff salary for processing combined association dues/PAC contribution checks; entering contribution data from the dues/PAC collection process or a stand-alone PAC fundraiser;
2. Staff salary for copying contributor response information, deposit slips and checks, identifying and following up on incomplete contributor occupation or employer information;
3. Staff salary spent identifying potential affiliated contributor contribution information.

The salaries described above compensate staff for organizing and processing committee information to facilitate compliance with the Act's reporting provisions, which include information related to the committee's fundraising activities along with

information on other, ongoing committee activities. Such expenditures are regular and necessary administrative costs imposed by the Act on any committee required to prepare and file campaign reports. These salary payments are therefore “costs of administration” under Regulation 18215(c)(16), whether they take the form of staff salary, or payments made to third-party vendors hired to assist the committee in complying with the Act’s fundamental campaign reporting provisions.

Question 4

4. Staff salary spent sending thank-you notes or preparing documents, certificates, or other acknowledgments of PAC donors.

Assuming that the donors are persons who made contributions in response to a fundraising solicitation, follow-up activities designed to reward or recognize the donors are not separable from the fundraising event or appeal that generated the contributions.³ The Commission declined to include the costs of fundraising activities in Regulation 18215(c)(16) when it adopted that regulation. The cost of compensating staff for fundraising tasks like these are neither “costs of administration” nor exempt “salaries”⁴ under Regulation 18215(c)(16). Nor are they costs imposed by the Act itself, like the compliance costs treated above, which are administrative necessities for every committee required to prepare and file campaign reports.

Question 5

5. Staff salary spent on writing or designing PAC fundraising solicitations for the sponsor’s newsletter, website, or other solicitation avenue.

Salaries paid to staff for writing or designing committee fundraising solicitations are costs of fundraising activities, not costs of administration. However, Regulation 18215(c)(9) excludes from classification as a “contribution” certain payments by an organization for a regularly published newsletter sent out to the organization’s members, as long as certain conditions, specified in the regulation, are met. A sponsor’s payment of costs associated with the dissemination of fundraising solicitations through such newsletters would then be exempted by this regulation from definition as “contributions.”

³ Your own analysis characterizes these measures as “donor retention activities,” distinguishable from “fundraising” work. But “donor retention activities” prepare the ground for future fundraising events. We do not believe that this distinction is a useful one in light of the question at hand.

⁴ We note that “salaries” are listed in the regulation as an example of “costs of administration,” not as a separate class of exempt costs.

Question 6

6. Printing & postage costs for a calendar of upcoming PAC fundraisers and events.

The answer here is the same as the answer to Question 4, with the exception noted in Question 5 for fundraising materials disseminated to members through a newsletter. The cost of a newsletter described in Regulation 18215(c)(9) is exempted from classification as a "contribution" when paid by a committee's sponsor.

Questions 7, 8 and 9

7. Costs of printing and postage for a donor thank-you mailing;
8. Costs of printing a poster identifying major PAC donors as a means of donor recognition;
9. Costs of a sponsor's general conference invitation if it refers to a PAC fundraiser held in conjunction with the sponsor's conference.

Payment of these costs would be a contribution by the sponsor for the reasons identified in answer to Question 4, subject to the possible application of the exception in Regulation 18215(c)(9), if the materials are sent to members in a newsletter.

Questions 10 and 11

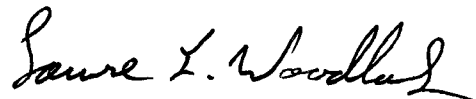
10. Costs of goods or services provided as premiums for PAC fundraising events or auctions (e.g., golf balls, vehicles, vacation items, etc.);
11. Costs of staff travel (airfare, meals, lodging, etc.) for attendance at a PAC fundraising event.

Such costs of fundraising events cannot be classified as "costs of administration." For the reasons stated above in footnote three, we cannot accept a proposed distinction here between "fundraising" and "donor retention" activities.

We hope that you find these responses helpful.

Sincerely,

Scott Hallabrin
General Counsel



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