



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
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April 4, 2023

James R. Sutton
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Re: Your Request for Informal Assistance
Our File No. I-23-030

Dear Mr. Sutton:

This letter responds to your request for advice regarding the campaign finance provisions of the Political Reform Act (the “Act”).¹ Because your inquiry is general in nature, we are treating your request as one for informal assistance.² Please note that we are not a finder of fact when rendering advice (*In re Oglesby* (1975) 1 FPPC Ops. 71), and any advice we provide assumes your facts are complete and accurate. If this is not the case or if the facts underlying these decisions should change, you should contact us for additional advice.

QUESTIONS

1. How should Ballot Measure Committee A list its sponsor, LLC-1, on the Committee’s statement of organization (Form 410) where LLC-1 is an affiliated entity of ABC Company & Affiliated Entities, which is the “name of filer” on the entities’ Major Donor Report?
2. How should Ballot Measure Committee A’s sponsor be referenced in the Committee’s name?
3. How should the Committee list LLC-1 as a top contributor, in its “ad paid for by” disclaimer?
4. How should the Committee list the contributions from LLC-1 on the Committee’s campaign statements (Form 460)?

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18104 through 18998 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

CONCLUSIONS

1. Committee A should list “ABC Company and Affiliated Entities, including LLC-1” as its sponsor on the Form 410. In addition, it would need to identify LLC-1’s responsible officer.
2. The Committee’s sponsor should be referenced in its name as “Sponsored by ABC Company and Affiliated Entities, including LLC-1.”
3. The Committee should list LLC-1 as a top contributor by including the words “Ad Committee's Top Funder(s)” followed by “ABC Company and Affiliated Entities, including LLC-1.” Nothing in the relevant statutes or regulations requires including the responsible officer for LLC-1 in the top contributor name for this disclosure.
4. Under Regulation 18248(c)(1), the Committee’s Form 460, Schedule A would include “LLC-1/ABC Company and Affiliated Entities.” It should also provide the name of LLC-1’s responsible officer as a public note.

FACTS AS PRESENTED BY REQUESTER

You represent several committees being set up to support local ballot measures on the March 2024 ballot which will receive contributions from LLCs. You also represent several LLCs which are making contributions to these ballot measure committees, and therefore need advice regarding Regulations 18402.2 and 18421.10.

Ballot Measure Committee A is primarily formed to support a local ballot measure on the March 2024 ballot. It has received over 80 percent of its funds from LLC-1, and employees of LLC-1 control Committee A, so Committee A is “sponsored” by LLC-1 pursuant to Section 82048.7. The Committee has received over \$50,000 from LLC-1. LLC-1 is one of several LLCs which are owned and managed by the same group of persons, so its political contributions are disclosed on an affiliated entity Major Donor report filed under the name “ABC Company & Affiliated Entities” pursuant to Regulation 18428.

ANALYSIS

Regulation 18421.10, which concerns reporting of contributions received by limited liability companies, states, in pertinent part:

“(a) Contributions from a Limited Liability Company that Qualifies as an Independent Expenditure Committee or Major Donor. For contributions of \$100 or more received from a limited liability company that has qualified as a committee under Sections 82013(b) or (c), the “name” of the contributor reported in a committee’s statements and reports filed under Chapter 4 or 5 of the Act shall include the name of the limited liability company and the full legal name of the limited liability company’s responsible officer, as defined in Regulation 18402.2.”

Regulation 18402.2 requires, in pertinent part:

“(a) Responsible Officer. A limited liability company that qualifies as a committee under Sections 82013(b) or (c) must identify a responsible officer on each statement and report filed under Chapter 4 or 5 of the Act. The “responsible officer” of the committee is the individual primarily responsible for approving the political activity of the limited liability company . . .”³

Your hypothetical indicates that “ABC Company and Affiliated Entities” is the “name of filer” on its Form 461 Major Donor report that reports LLC-1’s political contributions pursuant to Regulation 18428.

Regulation 18428 requires major donor and independent expenditure committees “required to aggregate contributions under Section 82015.5 or independent expenditures under Regulation 18225.4” to reflect “the total aggregated amount of the contributions or independent expenditures made for the required reporting period” on their campaign statements. Moreover, a committee’s statements must be “filed in the name of an individual or one of the contributing entities that directs and controls the making of the payments of the entity or entities whose contributions or independent expenditures are required to be aggregated.” Also, a committee must indicate on the statement, “under the ‘name of filer’ that the campaign statement includes the aggregated activities of other entities directed and controlled by the filer (e.g., (name of filer) ‘including aggregated contributions/independent expenditures’).”

LLC-1 is the sponsor of primarily formed Ballot Measure Committee “A,” in that it has contributed over \$50,000 to Committee A, and this represents 80 percent of Committee A’s funds. Accordingly, the determinative issue is how does Committee A list the following, considering that “ABC Company and Affiliated Entities” is the “name of the filer” for LLC-1 pursuant to Regulation 18428, while Regulation 18421.10 requires that for contributions received from a limited liability company that qualifies as a Major Donor committee, the “name” of the contributor shall include the name of the limited liability company and the full name of its responsible officer:

1. *Committee A’s sponsor on its Statement of Organization (Form 410)?*

Entities that qualify as a committee under Section 82013(a), by receiving contributions totaling \$2,000 or more in a calendar year for political purposes, must file a statement of organization (Form 410) under the Act. (Section 84101.) Here, because Ballot Measure Committee A would be sponsored by LLC-1 pursuant to Section 82048.7, Section 84102(b) would require

³ Section 82013, in part, defines “committee” to include any person or group of persons who directly or indirectly “(m)akes contributions totaling ten thousand dollars (\$10,000) or more in a calendar year to or at the behest of candidates or committees.” (Section 82013(c).) This type of committee is commonly referred to as a “Major Donor committee.” Major Donor committees are required to file certain campaign reports reflecting their contributions made, commonly referred to as “Major Donor reports.” (Section 84200(b).)

Ballot Measure Committee A, as a sponsored committee, to provide the name, street address, and telephone number of each sponsor.

In addition to being a sponsor, your facts also state that LLC-1 is one of several LLCs which are owned and managed by the same group of persons, so its political contributions are disclosed on an affiliated entity Major Donor report filed under the name “ABC Company & Affiliated Entities” pursuant to Regulation 18428.

In a somewhat analogous matter, a question was posed as to whether a recipient committee would satisfy the “top contributor” advertisement disclosure requirement as to affiliated entities qualifying as a top contributor by displaying the “name of filer” appearing on the entities’ most recent Major Donor Report. (*Lang* Advice Letter, No. I-18-160.)⁴ There we stated:

Regulation 18428 provides that affiliated entities must identify themselves on their Major Donor Reports by their “name of filer.” The “name of filer” designation for affiliated entities is a combination of the name of the individual, or one of the contributing entities, that directs and controls the relevant political activity and a statement indicating that the report includes the aggregated activities of other entities directed and controlled by the filer.⁵

When a person directs and controls the activity of another, both persons are considered “affiliated entities” and treated as one person for purposes of contribution limits, reporting, registration of committees, and gift limits under the Act. (See, e.g., *Meyn* Advice Letter, A-05-242; *Fechner* Advice Letter, 1-03-263.) This principle derives from the Commission Opinion, *In re Lumsdon*, 2 FPPC Ops. 140, which found that when an individual directs and controls an entity, as a majority shareholder for example, the individual and the entity should be treated as one “person” rather than separate persons.

While *Lumsdon*, *supra*, primarily focuses on the treatment of affiliated entities in the context of committee registration, the Commission and Legislature later extended its reasoning in regard to affiliation to various aspects of the Act. (See e.g., Section 85311; *Kanner* Advice Letter, 1-05-168.)

⁴ *Lang* was an impetus for Regulation 18450.3, which states “[a] committee disclosing a top contributor pursuant to Section 84503 must identify the top contributor using the “name of filer” required by Regulation 18428 on the contributor’s most recent campaign statement if the top contributor is a committee pursuant to Section 82013(c) and it qualifies as a top contributor as the result of aggregated contributions from other entities pursuant to Section 82015.5.”

⁵ This requirement may be satisfied by providing the phrase, “including aggregated contributions/independent expenditures,” following the name of the person directing and controlling the political activity. (Regulation 18428(b)(1).)

Consistent with the intent and purposes of the Act and AB 249, as well as the definition of “person” to include a group acting in concert under the Act, we find it appropriate to extend this reasoning to the context of “top contributor” disclosure for advertisements. Therefore, pursuant to that finding, affiliated entities whose aggregate contributions trigger “top contributor” disclosure should be identified on advertisements as a single “person.”

The *Lang* letter then explained the purpose of the “top contributor disclosure” is to provide relevant information to voters about who is truly paying for any campaign advertisements, thereby remedying the situation where top donors hide behind multiple layers of organizations to intentionally mislead viewers of an advertisement. That objective would be achieved by providing the “name of filer” associated with affiliated entities that qualify as “top contributors” because it ensures that the person directing and controlling contributions made by affiliated entities is disclosed on the relevant advertisement. (*Ibid.*)

Further, “while the source of the contributions (i.e., name of the entity listed on the contributor check) may in some instances be omitted from the advertisement under that approach, the public can access such information by reviewing the affiliated entities’ Major Donor Reports on the California Secretary of State’s campaign finance database, Cal-Access, or with the city or county the statement is filed.” (*Lang Advice Letter, supra.*) Lastly, the *Lang* letter noted that “requiring the names of the affiliated contributors alone would not provide the important information as to the ‘person’ directing and controlling the contributions; and requiring both (name of filer and names of contributors) may be too lengthy for the forum of an advertisement” therefore, the “top contributor” disclosure would be satisfied by displaying the “name of filer” appearing on the entities’ most recent Major Donor Report.

Using *Lang* as guidance in this situation, Committee A should list “ABC Company and Affiliated Entities, including LLC-1” as its sponsor on the Statement of Organization. In addition, it would need to identify LLC-1’s responsible officer. By doing so, the Committee will provide the public with the necessary information to identify the source of the contributions supporting the committee and the individual who is “primarily responsible for approving the political activity” of LLC-1 pursuant to Regulations 18402.2 and 18421.10.

2. Reference to the sponsor in the Committee’s name?

A committee’s statement of organization must include the name of the committee, and “[i]n the case of a sponsored committee, the name of the committee shall include the name of its sponsor. Whenever a committee has more than one sponsor, and the sponsors are members of an industry or other identifiable group, a term identifying that industry or group shall be included in the name of the committee.” (Section 84102(a).)

Here, for the same reasons just discussed, reference to the sponsor in the Committee’s name should be “Sponsored by ABC Company and Affiliated Entities, including LLC-1.” It would not be necessary to include the name of the responsible officer for LLC-1 in the Committee’s name because the Committee’s statement of organization would already list the name of the responsible officer.

3. *LLC-1 as a “major funder” in the Committee’s “ad paid for by” disclaimer?*

The Act requires certain communications qualifying as “advertisements” under Section 84501 to include disclosures, including “Ad Committee's Top Funder(s)” followed by the names of top contributors under Section 84503.⁶ Pursuant to Regulation 18450.3:

A committee disclosing a top contributor pursuant to Section 84503 must identify the top contributor using the “name of filer” required by Regulation 18428 on the contributor’s most recent campaign statement if the top contributor is a committee pursuant to Section 82013(c) and it qualifies as a top contributor as the result of aggregated contributions from other entities pursuant to Section 82015.5.

Therefore, following the words “Ad Committee's Top Funder(s),” Committee A should list as a top contributor “ABC Company and Affiliated Entities, including LLC-1.” Nothing in the relevant statutes or regulations requires including the responsible officer for LLC-1 in the top contributor name for this disclosure.

4. *Contributions from LLC-1 on the Committee’s campaign statements (Form 460)?*

Pursuant to Regulation 18248(c)(1), disclosure of a contribution by a recipient committee from an affiliated entity of a major donor filer should be disclosed as “name of contributor/name of filer.” Here, therefore, the Committee’s Form 460, Schedule A would include “LLC-1/ABC Company and Affiliated Entities.” It should also provide the name of LLC-1’s responsible officer as a public note.⁷

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Dave Bainbridge
General Counsel

By: *Jack Woodside*
Jack Woodside
Senior Counsel, Legal Division

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⁶ The Act defines “top contributors” as “the persons from whom the committee paying for an advertisement has received its three highest cumulative contributions of \$50,000 or more.” (Section 84501(c)(1).)

⁷ Note that the Form 461 filed by ABC Company and Affiliated Entities would note which entity made the payment.