

Memorandum

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*4-consideration*  
*84302*

To : Legal Division

Date : May 13, 1976

*M-76-591*

From : FAIR POLITICAL PRACTICES COMMISSION

Gina

*Gina*

Subject: Campaign Filing Obligations of Unions

At the April 23 opinion request meeting, we discussed the problem posed in my memo of April 22 concerning the status of a labor organization which acts as a conduit for member unions' political funds and contributions.

It was decided at that meeting that both the local union and the national labor organization would become committees after receiving \$500 and would therefore be required to file statements of organization with the Secretary of State.

I have just had an opportunity to read a letter sent by the legal counsel for the Secretary of State to the California Conference of Machinists. The letter outlines similar if not identical circumstances. The decision concerning filing obligations of the two groups, however, seems to be different. In Betty Jo's opinion, "The union local in collecting the fixed portion of dues for a political purpose from its members and forwarding that fixed amount on to the California Conference of Machinists, if acting as an intermediary, will not be required to file committee campaign statements. The California Conference of Machinists should, however, report the name, address and amount of contributions received from each local."

The Secretary of State's opinion seems to give the local union an option of either being a committee or intermediary.

Do you agree with my interpretation of the opinion? If so, do we want to change our opinion or inform the Secretary of State that we do not agree with her conclusion?

cc: Nan Jay

*Have the local is an intermediary. In the April 22<sup>d</sup> question the national was the intermediary. Since the local collected the funds and named the recipients of the contributions, the national merely distributed the contributions according to these instructions.*

April 13, 1976

John T. Schiavenza  
Executive Secretary-Treasurer  
California Conference of Machinists  
8130 Baldwin  
Oakland, California

Dear Mr. Schiavenza:

This letter is intended to reflect a summary of our conference of March 11, 1976.

Registration Requirement: If your Union maintains a political fund which is financed by a portion of the membership dues collected for a political purpose (for use in advocating the election or defeat of a candidate and/or the passage or defeat of a measure); and the amount collected or contributed totals \$500 or more in a calendar year, the Union will meet the statutory definition of a committee and will be required to file a Committee Statement of Organization, Form 410, pursuant to the requirements of Government Code Sections 82013(a) and 84101.

Reporting of Contributions Received from Members: The Fair Political Practices Commission has not established a different manner of reporting contributions received by Unions from Union locals.

The following is a method of reporting which would satisfy the disclosure requirements of the Political Reform Act of 1974:

Reporting of Contributions Received from Members: The California Conference of Machinists will be required to report "the full name of each person from whom a contribution or contributions totaling fifty dollars (\$50) or more has been received, together with the name of his (or her) employer, if any, or the principle place of business if he (or she) is self-employed, the amount he (or she) contributed, the date on which each contribution was received during the period covered by the campaign statement, and the cumulative amount he (or she) contributed." Government Code Section 84210(g).

The Union local in collecting the fixed portion of dues for a political purpose from its members and forwarding that

fixed amount on to the California Conference of Machinists, if acting as an intermediary, will not be required to file Committee Campaign Statements. The California Conference of Machinists should, however, report the name, address, and amount of contributions received from each local.

The type of form to be utilized in disclosing contributions received and expenditures made is determined by the monetary amount received from or expended to a single source. If no contributions or expenditures from or to an individual total \$50 or more, the contributions received and expenditures made by the California Conference of Machinists will be reported on Form 450, the Association Campaign Statement. If, however, the Union receives contributions or makes expenditures in the amount of \$50 or more to a single source, the contributions received and expenditures made must be reported on the Form 420, Committee Campaign Statement.

Committee Activity in 1975: During the course of our conversation, you indicated that during 1975, the California Conference of Machinists received contributions from Union members in the form of dues deductions. It appears that the members were aware that the amount deducted would be expended for a political purpose; that the money was deducted automatically and forwarded by the Union local to the California Conference of Machinists. You made a determination that your Organization has received contributions of \$500 or more for a political purpose during 1975. I advised you to complete and file campaign statements that reflect the nature of your activity from January 7, 1975 through June 30, 1975, and July 1, 1975 through December 31, 1975. Two campaign statements have been enclosed for your convenience.

If, after qualifying as a committee, you made contributions in connection with an election or elections held during 1975 and/or 1976, you are required to file campaign statements according to the election filing schedule established for each election to which you contributed.

Your apparent failure to register as a committee and file campaign reports in 1975, places your organizations activity in apparent violation of the law. The Secretary of State as a filing officer is charged with the responsibility of reporting apparent violations of this nature to the appropriate agency. Government Code Section 81010. The appropriate agency in this situation is the Fair Political Practices Commission. Government Code Section 91001(b). I have contacted Robert Stern and Richard Miller of the Fair Political Practices Commission. I have explained that the apparent violation was discovered through your efforts to ascertain your duties under the Act.

John F. Schiavenna  
April 13, 1976  
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I also explained that your failure to comply with the registration and reporting requirements were based on a misinterpretation of Government Code Sections 82013(a) and 84101.

Our interest, at this point, is in disclosure. We anticipate your immediate compliance with the registration and reporting requirements.

Registration as a Lobbyist: Your description of the duties and responsibilities of your position as Executive Secretary-Treasurer, of the California Conference of Machinists, indicated that you make decisions regarding the making of political contributions to State Elective Officeholders. You asked whether you could maintain your position as Secretary-Treasurer and register as a lobbyist. I explained that Government Code Section 86232 prohibits the making of a contribution of this nature by a lobbyist. I am enclosing a copy of the California Labor Federation, AFL-CIO Opinion, which states that a registered lobbyist is prohibited from participating in the making or arranging of contributions to the aforementioned persons. 1 F.P.P.C. Op. 28 (No. 75-094, June 18, 1975).

Please contact me if you have any questions regarding this matter.

Sincerely,

MARCH FONG EU  
Secretary of State

*Betty Jo Smith*  
Betty Jo Smith  
Legal Counsel  
Political Reform Division

EJS:vz  
Enclosures

cc: Richard Miller, Enforcement Division  
Fair Political Practices Commission

# Memorandum

To : Ted, Ken, Mike, Natalie, Nan & Jay

Date : April 22, 1976

From : FAIR POLITICAL PRACTICES COMMISSION  
Gina

*Gina*

Subject: Intermediary, committee, or nothing

The Retail Clerk's Union and the Communication Worker's Union asked the same question last week.

Both unions collect dues, of which a portion is earmarked for political purposes. They make no direct contributions, however. All money is sent to a national organization along with specific instructions indicating to whom contributions should be sent. The national organization then makes the direct contribution.

Query:

1. Are both organizations committees?
2. Is the local union a committee and the national organization an intermediary?
3. Is the national organization a committee and the local union simply an agent for them? (This is essentially how we have classified many state organizations. For example, the State Pharmaceutical Assn. acts as the PAC for local Pharmaceutical Associations making all direct contributions. The local organizations collect money from their members and give it to the State PAC for disbursement. Only the state organization must file as a committee).
4. None of the above.
5. All of the above.
6. An alternative creative response.

**Memorandum**

To : Legal Division

Date : May 13, 1976

From : FAJR POLITICAL PRACTICES COMMISSION  
GinaSubject: AB 1597 (Copy Attached) *Gina*

Natalie and I have discussed AB 1597 (which allows local county central committees to provide a fund solicitation envelope to the clerk to be mailed with the sample ballot to each registered voter of the committee's party), in the context of whether or not the envelope, if 200 or more are mailed, would be considered a mass mailing. The decision was, it would not.

The bill also provides for specific handling and disbursement of funds received. I have been asked by the Republican Central Committee of Alameda County whether a new committee will be formed if they comply with the provisions of the bill. It appears to me that this would be the case since the bill specifically states that "All funds received by the return of such party contributor envelopes shall be kept separate from all other funds and shall be kept in a fund (account) to be established in each county under trusteeship consisting of the chairman and treasurer of the county central committee plus a third trustee resident in the respective county...."

I would appreciate your opinion on the above and any additional pitfalls they may encounter in their compliance with the provisions of the bill as it relates to their filing obligations under the Political Reform Act.

cc: Nan  
Jay

715-57-117  
Assembly Bill No. 1597

CHAPTER 1162

An act to add Sections 10010.5 and 10012.1 to the Elections Code, relating to sample ballot mailings.

[Approved by Governor September 29, 1975. Filed with  
Secretary of State September 29, 1975.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1597, Berman. Sample ballot mailings.

Present law provides no procedure whereby the county central committee may solicit voter contributions through sample ballot mailings distributed by the county clerk.

The bill establishes a procedure whereby the county central committee of each qualified political party may provide a fund solicitation envelope to the clerk to be mailed with the sample ballot to each registered voter of the committee's party. All funds received are to be deposited in a trust account and distributed as provided in the act.

Any increased cost incurred by the clerk is to be paid by the county central committee.

The bill declares that neither appropriation is made nor obligation created for reimbursement of any local agency because the act contains a revenue source which may be utilized by local governments to cover costs of the act.

*The people of the State of California do enact as follows:*

SECTION 1. Section 10012.1 is added to the Elections Code, to read:

10012.1. In each county, the county central committee of each qualified political party may supply to its county clerk a party contributor envelope to be included in the mailing of the sample ballot to each of that political party's registered voters in the county. The clerk shall notify the respective county committee of, and the committee shall reimburse the county for, any actual costs incurred by such inclusion. The clerk may, prior to acting pursuant to this section, require the county committee to post a bond to ensure such reimbursement.

Each envelope shall contain the name and address of the contributor and shall contain language which informs the contributor of the manner in which the money received shall be spent. The language on the envelope shall not contain words critical of any other political party.

All funds received by the return of such party contributor envelopes shall be kept separate from all other funds and shall be kept in a fund (account) to be established in each county under a

trusteeship consisting of the chairman and treasurer of the county central committee plus a third trustee resident in the respective county to be appointed by the chairman of the state central committee. Any funds which are prohibited under federal law from being used for candidates for federal office shall be further segregated and the portion allocated to candidates shall be disbursed only to candidates for state office.

In the case of the Democratic Party and the Republican Party all such funds received shall, in turn, be paid out in the following manner: one-third to the state central committee of the party, one-third to the county central committee of the party for that county, and one-third divided equally among the nominees of the party to represent congressional, State Senate and Assembly districts located in the county. In the event that the State Senate seat is not up for election, the share for that office shall be allotted equally between the nominees for Congress and the Assembly.

In the event that a district is located only partially within a county, the nominee of the party representing such district shall receive a proportionate share of the money allocated to nominees based on the population of that portion of the district which is located within the county.

Nothing in this section shall be construed to require the county central committee of one party to disburse funds received pursuant to this section to a state or county central committee or nominee of another party.

SEC. 2. Section 10010.5 is added to the Elections Code, to read:  
10010.5. In each county, the county central committee of each qualified political party may supply to its county clerk a party contributor envelope to be included in the mailing of the sample ballot to each of that political party's registered voters in the county. The clerk shall notify the respective county committee of, and the committee shall reimburse the county for, any actual costs incurred by such inclusion. The clerk may, prior to acting pursuant to this section, require the county committee to post a bond to ensure such reimbursement.

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All funds received by the return of such party contributor envelopes shall be kept separate from all other funds and shall be kept in a fund (account) to be established in each county under a trusteeship consisting of the chairman and treasurer of the county central committee plus a third trustee resident in the respective county to be appointed by the chairman of the state central committee. Any funds which are prohibited under federal law from being used for candidates for federal office shall be further

segregated and the portion allocated to candidates shall be disbursed only to candidates for state office.

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In the event that a district is located only partially within a county, the nominee of the party representing such district shall receive a proportionate share of the money allocated to nominees based on the population of that portion of the district which is located within the county.

Nothing in this section shall be construed to require the county central committee of one party to disburse funds received pursuant to this section to a state or county central committee or nominee of another party.

SEC. 3. Section 10010.5 as added to the Elections Code by Section 2 of this act shall become operative only if Assembly Bill No. 1961 of the 1975-76 Regular Session of the Legislature and this bill are both chaptered and become effective on or before January 1, 1976, in which case Section 1 of this act shall not become operative. Therefore, Section 1 of this act, adding Section 10012.1 to the Elections Code, shall not become operative if Assembly Bill No. 1961 and this bill are both chaptered and become effective on or before January 1, 1976, in which case Section 2 of this act shall become operative.

SEC. 4. Notwithstanding Section 2231 of the Revenue and Taxation Code, there shall be no reimbursement pursuant to this section nor shall there be any appropriation made by this act because this act contains a revenue source which may be utilized by local governments to cover the cost of the mandate.

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## Memorandum

To : Dan Lowenstein, Chairman  
Fair Political Practices Commission

Date: May 10, 1976

No. :

From : Office of the Secretary

Subject: Conflict of Interest Code

The Agriculture and Services Agency is preparing a conflict of interest code pursuant to Article 3 (commencing with Section 87300) of Chapter 7 of the Government Code.

This is to request the Commission to issue an opinion on whether the Agriculture and Services Agency must adopt its code as a rule or regulation to be published in the California Administrative Code. At present, this Agency has no such published rules and regulations, nor any assigned California Administrative Code Title under which to publish the code.

Section 87311 of the Government Code specifies that state agencies are subject to the Administrative Procedure Act with respect to the preparation of the codes. However, the section is unclear whether this governs only the procedure for adopting such codes or mandates publication as a rule or regulation. The second sentence of that section with respect to preparation of codes by local government agencies stresses the procedural aspect and guarantees adequate notice and a fair opportunity to present views. Thus, the thrust of the section is on a process to assure adequate input by employees and other interested persons.

I would greatly appreciate it if you would set this item for your agenda at the next Commission meeting. I will have people available from the Office of Administrative Hearings to discuss this issue and the costs involved in publishing such codes as rules and regulations.

I look forward to hearing from you soon on this matter. If you or your staff have any questions regarding this request, please contact John Davies (5-0784) or myself (5-1935).

*Thank you.*

*Rose*  
Rose Elizabeth Bird  
Agency Secretary