

Memorandum

To : Robert C. Summers
Franchise Tax Board

Date : January 12, 1978

78-225

From : FAIR POLITICAL PRACTICES COMMISSION
Barbara Campbell *Barbara*

Subject: Intermediaries

This is in response to your memorandum dated October 6, 1977, concerning intermediaries. I apologize for the delay in responding.

Government Code Section 84302 requires that a person who makes a contribution on behalf of another, or while acting as an agent or intermediary of another, disclose to the recipient of the contribution the name of the person on whose behalf the agent or intermediary is acting. The Act also requires that identification of both the intermediary and the contributor of a contribution be included on the recipient's campaign statement.^{1/}

The principal purpose of the requirement is to permit the tracing of funds so the true source of a contribution can be verified. It is the staff's view, therefore, that a person acts as an intermediary only in those cases where the true source of a contribution may be confused.^{2/} For example, an individual who acts merely as a messenger by delivering a contribution from a donor to a recipient is not required to be disclosed as an intermediary on the recipient's campaign statement. In addition, if a check is made out to B but is earmarked by the donor, A, to be given to a specific candidate and B endorses the check over to the candidate, B is not an intermediary. The face of the check received

^{1/} Note that an "agent" does not have to be disclosed, only an intermediary.

^{2/} This view is limited to intermediaries for purposes of Chapter 4 of the Political Reform Act.

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by the candidate discloses A as the true source of the contribution. B has been given specific instructions and has no discretion over the making of the contribution.

However, once there may be confusion about the source of the contribution, the person delivering the contribution becomes an intermediary. Accordingly, if A gives B money for a contribution to a specific candidate and B writes a separate check for that amount payable to the candidate, B must be reported on the candidate's campaign statement as the intermediary of A's contribution.

If B is given money for campaign contributions and is given discretion to decide how large the contributions shall be or who the recipients shall be, he or she is acting as a committee rather than an intermediary. B would therefore have to file as a committee under Government Code Section 82013(a) once \$500 was received.

Applying these principles to the situations you posed, none of the people who delivered the checks are intermediaries for purposes of disclosure.

In situation 1, this conclusion is based on the assumption that B, in "actually handl[ing]" the funds, only gives the check to A which C prepares for A. In that situation B is only acting as C's messenger. If C were to earmark a check for candidate A but make it payable to B and B simply endorsed the check over to A, B would also not be an intermediary.

In situations 2-5, the people who actually deliver the checks are only acting in a messenger capacity. They would not have to be disclosed as intermediaries on the recipient's campaign statement. This conclusion as to situations 3, 4 and 5 assumes that the association or committee making the contribution prepared the check.

If you have any questions, please feel free to call me.

BC:plh

Memorandum

78225

To : Michael Bennett, Executive Director
 Fair Political Practices Commission
 1100 K Street
 Sacramento, CA 95814

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Date : October 6, 1977

File No.:

From : Robert C. Summers

Subject: Intermediaries - FPPC Should Provide Guidelines

Section 84302 requires disclosure of agents or intermediaries in making contributions. The Attorney General's analysis make it clear an agent is one who represents another and an intermediary is a mutual agent. Since this is a prohibition section, there is concern and confusion by both auditors and committee representatives in disclosing contributors. The areas of greatest confusion involve contributions made by associations. Listed below are some examples of different situations where agents or intermediaries may be involved.

1. Candidate A needs money for his campaign and asks B to help him obtain funds. B, because of his influence with C, induces C to make a donation to A. In one situation B actually handles the funds and in another C gives the money directly to A.
2. The president of an association delivers an association check to a candidate.
3. A statewide association has many local subdivisions. The board of directors of the statewide chapter authorizes a contribution and has a member of a local chapter deliver it.
4. An association has a political action committee composed of six association officers. The PAC authorizes a contribution and has an association member (not a member of the PAC) deliver the check.
5. A committee consisting of individuals from several independent banking organizations decides to give a contribution and has an individual from another bank (not a member of the committee) deliver the check. In one situation he delivers the check by himself and in another situation he delivers it during an event attended by other nonmember bankers.

Your prompt attention will be appreciated. Please advise us in each of the examples, whether or not an intermediary is involved.



Chief, Political Reform Audit Division

cc: Dan Converse
 Doug Dick
 Norman L. Fuller

Jim Turrini
 William Dayton