

82025
18215(b)
18225(b)(4)
84302

December 10, 1979

Mr. Roger A. Carnagey
Brundage, Davis, Frommer and Jesinger
465 California Street, Suite 210
San Francisco, CA 94104

79-021

Dear Mr. Carnagey:

In your letter of November 19, 1979, you ask several questions about the Consumers Protection Fund (hereinafter referred to as "the Fund") of a local union in the plumbing and pipefitting industry. I will answer your questions in the order you have raised them.

1. Is the fund making a "contribution" when it pays a speaker's fee to local officeholders or candidates for speaking to groups on issues and topics of importance to the industry?

Such a payment will be a contribution "except to the extent that full and adequate consideration is received unless it is clear from the surrounding circumstances that it is not made for political purposes" (Govt. Code §82015). With the expressed limitations, therefore, such a payment will be a contribution if received by or made at the behest of a candidate (2 Cal. Admin. Code §18215(b)). Such a payment may also be an expenditure giving rise to reporting obligations unless it is clear from the surrounding circumstances it is not made for political purposes (Govt. Code §82025). A payment will be an expenditure if made by "an organization formed or existing primarily for political purposes including but not limited to a political action committee established by any membership organization, labor union or corporation" (2 Cal. Admin. Code §18225(b)(4)).

If the speaking fee is given for full and adequate consideration, or if not but it is clear from the surrounding circumstances that it is not made for political purposes, or if the Fund is not an organization formed or existing primarily for political purposes, then the fee will not give rise to reporting obligations under Chapter 4 of the Political Reform Act (Govt. Code §§84100-84400).

The payment may, however, still be reportable by the recipient as income under Chapter 7 of the Act (Govt. Code §§87100-87313).

2. Is payment to a local officeholder or candidate for attending a seminar at which industry issues and topics are discussed a "contribution"?

Whether such payments are contributions will depend upon the same analysis given in response to your first question. If such payments are not contributions or expenditures, they may still raise reporting obligations under other parts of the Act. If the persons receiving the payments are state officials who are the subjects of attempt to influence legislative or administrative action (see Govt. Code §§82032, 82037, 82002), then the payments may be reportable as lobbying expenses under Govt. Code §§86108 and 86109. In addition, the payments may be reportable by the recipient as income under Chapter 7 of the Act (see especially Govt. Code §§82030 and 87207).

3. Is the Fund an "intermediary or agent" within the meaning of Govt. Code §84302?

If the Fund is making contributions or expenditures and if a contribution to the Fund is earmarked by the donor for payment to a specific candidate or official, then with respect to that contribution the Fund will be an intermediary.

4. Is the Fund a "Committee" within the meaning of Govt. Code §82013?

If the Fund receives \$500 in a calendar year in contributions as discussed in response to your first question it will be a committee under Section 82013(a). If the Fund is not formed or existing primarily for political purposes (see 2 Cal. Admin. Code §18225(d)(4)), it will still become a committee if the funds raised for purposes specified in Section 18225(c) amount to \$500 in a calendar year.

5. Can the Fund be classified as engaging in "lobbying"?

The Fund will be involved in lobbying if it employs a lobbyist (see Govt. Code §82039) or if it makes payments to influence legislative or administrative action (see Govt. Code §§82045, 82032, 82002, 82037 and 86100-86300). It should be noted that the lobbying provisions of the Act apply only to activities involving State agencies and officials.

6. What are the Union's and Fund's filing obligation?

If the Fund makes contributions and expenditures it will have to file campaign disclosure forms reporting its activities. The times and places these forms must be filed will depend upon the person to whom the Fund contributes and the dates of the elections in which the latter are involved. If the conditions set forth in 2 Cal. Admin. Code §18419 are met, the Union and the Fund can file a single report on a consolidated basis.

If the Fund has reportable lobbying expenses, it must file generally with the Secretary of State in each month following a month in which there has been reportable activity (see Govt. Code §86110).

I hope the information I have supplied is helpful. I have enclosed several publications of this office which should assist you in answering specific questions. If you need further assistance, you may call us at 916/322-5662.

Sincerely,

John Giansello
Political Reform Analyst

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November 19, 1979

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San Francisco

Fair Political Practices
Commission
Post Office Box 807
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Attn: Advice Division

RE: Advice on Status of Consumers Protection Fund
Administered by Local Union

Gentlemen:

This letter is written as a request for your office's advice on the status of a union-sponsored fund, part of whose activities may be subject to the Political Reform Act of 1974. The operational circumstances and activities of the fund are set forth in the attachments and the description below.

The local union, which is a construction union in the plumbing and pipefitting industry, has established a fund known as the Consumers Protection Fund. The fund has been established by a majority vote of the Union's general membership, and its proclaimed objectives are to educate the public, consumers and other political bodies and fraternal associations regarding the atmosphere in which the industry functions as well as presenting information on topical industry subjects. The fund also will give financial assistance to individuals and other organizations that assist in and advocate the principles espoused by the fund. (See attachments)

The assets of the fund will be derived from a member-authorized check-off of ten cents (\$.10) per hour (\$.15 per hour as of January 1, 1980) from the member's Vacation Fund contributions or from a direct payment of the same amount from the member employee to the local Union.

The fund will continue to operate from year to year only upon the majority vote of the general membership annually.

As one component of the educational and informational program conducted by the Consumers Protection Fund, persons who are knowledgeable about the plumbing, heating and cooling industry will be asked to participate. The Union is particularly interested in the following two aspects of such participation:

1. Persons who hold office or are candidates for office, or both, at the local level will be asked to speak to various groups concerning subjects of interest in the industry. These speakers will be paid a speaking fee for their services;
2. Persons who hold office or are candidates for office, or both, at the local level will be asked to attend informational seminars sponsored by the fund. Some of the points discussed at these seminars are exemplified by Attachment "C" hereto. The individual attending such a seminar will be paid for the hours spent in attendance. The payment is normally two hundred dollars (\$200.00) or less.

The above payments will normally exceed five hundred dollars (\$500.00) during any calendar year. It should be noted that each category of payments may also independently exceed the sum of five hundred dollars (\$500.00) for a calendar year. Although the Consumers Protection Fund may prospectively expend other of its assets on activities connected with candidates or political activities at the local level, the current payments and activities of the fund which are even questionably related to the Political Reform Act of 1974, as amended, are limited to the above categories.

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The following inquiries are made to your Commission for analysis and response:


1. Is the Consumers Protection Fund making a "contribution," within the meaning of Government Code §82015, when it pays a speaker's fee to local officeholders and/or candidates for political office for speaking to groups on issues and topics of import to the industry?
2. Is the monetary remuneration to a local officeholder and/or candidate for attending the Consumers Protection Fund seminar at which industry issues and topics are discussed a "contribution" within the meaning of Government Code §82015?
3. Is the Consumers Protection Fund, as administered by the local union, an "intermediary or agent" within the meaning of Government Code §84302?
4. Is the Consumers Protection Fund a "committee" within the meaning of Government Code §82013?
5. Can the Consumers Protection Fund be classified as engaging in "lobbying" under any statutory provision of the Political Reform Act of 1974?
6. In light of your responses to the above inquiries, what are the filing and reporting requirements, if any, for the local union and/or the Consumers Protection Fund?

If it is felt that the local union and/or the Consumers Protection Fund should be reporting to the Commission, please send the appropriate forms along with your response to this request for advice. If any further data is needed, feel free to contact our San Francisco office.

Your prompt and immediate attention to this matter will be greatly appreciated.

Very truly yours,

BRUNDAGE, DAVIS, FROMMER & JESINGER


ROGER A. CARNAGEY

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