

State of California



Fair Political Practices Commission

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Technical Assistance ••• Administration ••• Executive/Legal ••• Enforcement ••• Conflict of Interest
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December 14, 1979

Mr. Tony Bennetti
San Jose City Attorney's Office
151 West Mission Street
San Jose, CA 95110

A-79-028

Dear Mr. Bennetti:

This is in response to the request for advice which you made in our telephone conversation of November 26, 1979, and will confirm the response I gave you, again by telephone, on November 29, 1979. The facts, as I understand them, are as follows.

Alfredo Garza is currently a member of the San Jose City Council. He has been indicted for bribery and a conviction on that charge would cause automatic removal from office under the terms of the San Jose City Charter. A committee is being formed to take donations and to pay for Mr. Garza's legal expenses incurred in his defense. Mr. Garza has a separate active controlled committee, I.D. No. 743684. You have asked, on Mr. Garza's behalf, whether such donations should be reported as gifts or as contributions within the meaning of the Political Reform Act, Government Code Sections 81000, et seq.^{1/}

Under the conflict of interest reporting provisions of the Act, Sections 87200-87210, Mr. Garza must report sources of gifts to him of \$25 or more in value. However, under Section 82028(b)(4) of the Act, the term "gift" does not include reportable campaign contributions. By regulation, the Commission has defined the term "contribution" as any

^{1/} All statutory references are to the Government Code unless otherwise stated.

Mr. Tony Bennetti
December 14, 1979
Page Two

payment for which full and adequate consideration is not paid that is received by or made at the behest of:

A candidate, unless it is clear from surrounding circumstances that the payment was received or made at his behest for personal purposes unrelated to his candidacy or status as an officeholder...

2 Cal. Adm. Code Section 18215(b)(1).

Under Section 82007, the term "candidate" includes an individual who:

...gives his consent for [a committee] to receive a contribution or make an expenditure with a view to bringing about his nomination or election to any elective office, whether or not the specific elective office for which he will seek nomination or election is known at the time the contribution is received or the expenditure is made and whether or not he has announced his candidacy or filed a declaration of candidacy at such time....

(Emphasis added.)

The fact that Mr. Garza has an active controlled campaign committee (I.D. No. 743684) leads to the conclusion that he is a candidate, and payments received by him or made at his behest which are not solely personal and unrelated to his candidacy or status as an officeholder are therefore "contributions." Because the purpose of this legal defense fund is to pay the costs of litigation, including attorney's fees, and the client, Mr. Garza, as the attorney's principle, will exercise control over such costs, payments from such a fund will be made at Mr. Garza's behest. See 2 Cal. Adm. Code Section 18215(c).

Such payments at Mr. Garza's behest cannot be said to be "totally unrelated to his status as an officeholder." The allegations in the suit are allegations concerning Mr. Garza's actions as a public official and one of the penalties is automatic removal from office. Because these allegations relate to his conduct in office, defense against them bears directly on his status as an officeholder. Finally, since in making payments for Mr. Garza's defense the legal defense

Mr. Tony Bennetti
December 14, 1979
Page Three

fund is making "contributions," payments made to the fund are also contributions, as the regulation also provides that:

"Contribution" includes any monetary or non-monetary payment for which full and adequate consideration is not made to the donor that is received by any person ... if the payment is "earmarked" for the making of contributions or expenditures. A payment is "earmarked" when, at the time of making the payment the donor knows or has reason to know that the payment or funds with which the payment will be commingled will be used to make contributions...

2 Cal. Adm. Code Section 18215(d).

See also the Buchanan Opinion, 5 FPPC Ops. 14 (No. 78-013, 1978).

As contributions, the payments are reportable under Chapter 4 of the Political Reform Act rather than Chapter 7. If you have any further questions concerning this matter, please do not hesitate to call me.

Sincerely,



Sarah T. Cameron
Deputy Chief for
Conflicts of Interest
Legal Division

STC:kp