

A-79-77

December 13, 1979

Senator Bob Wilson
California State Senate
State Capitol
Sacramento, CA 95814

Dear Senator Wilson:

Thank you for your letter of November 16, 1979, requesting advice with respect to the campaign disclosure provisions of the Political Reform Act. Government Code Sections 84100 - 84400. I hope the following advice provided pursuant to Government Code Section 83114(b) is helpful.

You have requested advice concerning the reporting of contributions involving an intermediary. Specifically, you have asked the following questions:

- (1) What is the definition of an intermediary?
- (2) Is it necessary to list [a PAC as] an intermediary when reporting contributions from a PAC and when the I.D. number is used?
- (3) What is [your] responsibility in reporting intermediaries when they do not divulge such information to [you]?

WHAT IS THE DEFINITION OF AN "INTERMEDIARY"?

No explicit definition of the term "intermediary" is contained in either the Act or Commission regulations. However, because Government Code Section 84302 uses the term in the context of requiring reporting of the true donor of contributions, the Commission has given the term a functional definition consistent with the disclosure purposes of the Act. Government Code Section 84302 provides, in pertinent part:

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No person shall make a contribution on behalf of another, or while acting as the intermediary or agent of another, without disclosing to the recipient of the contribution both his own full name and street address, occupation, and the name of his employer.... The recipient of the contribution shall include in his campaign statement the full name and street address, occupation, and the name of the employer, if any, or the principal place of business if self-employed, of both the intermediary and the contributor.

In view of the purpose of the section to require identification of the true donor, the Commission has said in past advice letters that someone stands as an intermediary in relation to a contributor when, without disclosure of the identity of the contributor, the intermediary would be considered the source of the contribution by the recipient. In such cases, the intermediary must disclose to the recipient that it is not "his" contribution, but that of another. What this functional approach eliminates from the definition of intermediary is the person who merely delivers a contribution. Thus, when a person makes a contribution by check payable to the candidate, the delivery of the check by a third party does not make the third party an intermediary. This would be the case even if the check were made payable to the third party and endorsed by the third party to the candidate. In both cases, what makes this merely delivery is the fact that the drawer of the check is revealed as the true donor. However, when a check is payable to the third party, but earmarked by the contributor for a specific candidate, the third party becomes an intermediary when the contribution is made by means of his check.

IS IT NECESSARY TO LIST AN INTERMEDIARY
WHEN REPORTING CONTRIBUTIONS FROM A PAC
AND WHEN THE I.D. NUMBER IS LISTED?

The answer to the question depends upon whether, according to the functional approach described above, the PAC is acting as an intermediary in making the contributions. Accordingly, where a contribution is made to the PAC to be distributed at the discretion of the PAC, the PAC is the true donor because its discretion determines the recipient. However, when, as in the situation described in the preceding section, the donor earmarks the contribution, the PAC is an intermediary.

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YOUR RESPONSIBILITY IN REPORTING INTERMEDIARIES
WHEN THEY DO NOT DIVULGE SUCH INFORMATION TO YOU

Government Code Section 84302 requires a recipient of a contribution from an intermediary to report both the intermediary and the contributor. The intermediary also has an independent duty to disclose his acting as an intermediary. When a person does not disclose to the recipient of a contribution that he is acting as an intermediary and there is no reason for a recipient to believe that the prima facie contributor might be an intermediary, there is no liability for failure to report the intermediary. This standard of liability is based upon Government Code Section 91004, which creates liability for both intentional and negligent violations of reporting requirements, and upon the "reasonable diligence" reporting standard of Government Code Sections 81004 and 84209.

I hope that I have answered your questions. If you desire further information or additional clarification, please do not hesitate to call me.

Very truly yours,

Thomas M. Sobel
Chief
Legal Division

TMS:plh

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Very truly yours,

Thomas M. Sobel
Chief
Legal Division

TMS:plh

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SACKS & ZWEIG
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October 3, 1983

Ms. Jeannie Pritchard
Technical Assistance Consultant
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Dear Ms. Pritchard:

Please forward to me a copy of the F.P.P.C. Advice Letter of December 13, 1979 to Senator Bob Wilson, your File No. A-79-77.

In addition, I would greatly appreciate a written response to the questions set forth below, which are based upon the following hypothetical factual situation.

Hypothetical Factual Situation:

Mr. Smith does not wish personally to contribute money to the Committee for Cleaner Beaches ("Committee") which is opposing a ballot measure. However, Mr. Smith asks Mr. Jones to contribute \$5,000.00 to the Committee. Mr. Jones does contribute \$5,000.00 to the Committee by way of a personal check which contains his name, residence address and phone number. He provides the Committee with information concerning his employer, which is not Mr. Smith.

At no time does Mr. Smith promise or imply that he will in any way reimburse Mr. Jones for his contribution. At no time does Mr. Smith reimburse Mr. Jones for the contribution, nor does he forgive any indebtedness, nor in any other way make Mr. Jones whole for the \$5,000.00 which Mr. Jones contributed to the Committee.

Mr. Jones files the appropriate reporting forms indicating that he gave \$5,000.00 to the Committee. He makes no mention on the reporting form of Mr. Smith nor of his conversation with Mr. Smith. (In fact, he tells no one about his conversation with Mr. Smith).

The Committee files appropriate reports showing Mr. Jones as

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the source of a \$5,000.00 contribution.

Questions:

1. Is Mr. Jones an "intermediary" for Mr. Smith as that term is used in Government Code §84302?
2. Is Mr. Jones an "agent" of Mr. Smith as that term is used in Government Code §84302?
3. Has Mr. Jones made a "contribution on behalf of" Mr. Smith as that phrase is used in Government Code §84302?
4. Regarding the facts stated in the hypothetical, have any of Mr. Smith, Mr. Jones or the Committee failed to report anything which the 1974 Political Reform Act or other California law requires them to report?

Your prompt response would be greatly appreciated.

Thank you very much for your anticipated courtesies in this regard.

Very truly yours,

SACKS & ZWEIG


Michael K. Zweig

MKZ:jma